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COMMITTEE ON FOREIGN AFFAIRS

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FOREWORD

This volume of legislation and related material is part of a three-volume set of laws and related material frequently referred to by the Committees on Foreign Relations of the Senate and Foreign Affairs of the House of Representatives, amended to date and annotated to show pertinent history or cross references.

Volumes I and II contain legislation and related material and are republished with amendments and additions at the end of each annual session of Congress. Volume III which contains treaties and related material will not be revised every year, but only as necessary. It was most recently published in 1981.

We wish to express our appreciation to Larry Nowels of the Foreign Affairs and National Defense Division of the Congressional Research Service of the Library of Congress who prepared this year's compilation.

CHARLES H. PERCY,
Chairman, Committee on Foreign Relations.

CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs.

EXPLANATORY NOTE

All public laws included in this volume, except as noted below, are codified and in force through the end of the 97th Congress. The texts of the public laws in this volume are printed as they appear in the United States Statutes at Large rather than the United States Code. Amendments are incorporated into the text and distinguished by a footnote. The following public law remains in the volume although it has been held unconstitutional:

1. Tonkin Gulf Resolution (page 657).

All Executive orders, and State Department delegations of authority are codified and in force as of January 1, 1983.

ABBREVIATIONS

Bevans	Treaties and Other International Agreements of the United States of America, 1776–1949, compiled under the direction of Charles I. Bevans.
CFR	Code of Federal Regulations.
EAS	Executive Agreement Series.
F.R	Federal Register.
LNTS	League of Nations Treaty Series.
I Malloy, II Malloy	Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers, 1776–1909, compiled under the direction of the United States Senate by William M. Malloy.
Stat	United States Statutes at Large.
TIAS	Treaties and Other International Acts Series.
TS	Treaty Series.
UNTS	United Nations Treaty Series.
U.S.C	United States Code.
UST	United States Treaties and Other International Agreements.

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1. Trade Legislation and Related Documents

a. Trade Act of 1974, as amended [1]

Partial text of Public Law 93-618 [H.R. 10710], 88 Stat. 1978, approved January 3, 1975, as amended by Public Law 94-455 [H.R. 10612], 90 Stat. 1520 at 1763, approved October 4, 1976; Public Law 96-39 [H.R. 4537], 93 Stat. 144, approved July 26, 1979; Public Law 96-417 [S. 1654), 94 Stat. 1727 at 1746, approved October 10, 1980; Public Law 97-35 [H.R. 3982], 95 Stat. 357 at 881-893, approved August 13, 1981; Public Law 97-164 [H.R. 4482], 96 Stat. 49, approved April 2, 1982; and by Public Law 97-456 [H.R. 6094], 96 Stat. 2503, approved January 12, 1983

AN ACT To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Trade Act of 1974".

Sec. 2. Statement of Purposes.

The purposes of this Act are, through trade agreements affording mutual benefits—

(1) to foster the economic growth of and full employment in the United States and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade;

(2) to harmonize, reduce, and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States;

(3) to establish fairness and equity in international trading relations, including reform of the General Agreement on Tariffs and Trade;

(4) to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firms, workers, and communities to adjust to changes in international trade flows;

(5) to open up market opportunities for United States commerce in nonmarket economies; and

(6) to provide fair and reasonable access to products of less developed countries in the United States market.

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[1] 19 U.S.C. 2101-2487.

TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

Sec. 101. Basic Authority for Trade Agreements.[2]

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this Act will be promoted thereby, the President—

(1) during the 5-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b)(1)[3] Except as provided in paragraph (2), no proclamation pursuant to subsection (a)(2) shall be made decreasing a rate of duty to a rate below 40 percent of the rate existing on January 1, 1975.

(2) Paragraph (1) shall not apply in the case of any article for which the rate of duty existing on January 1, 1975, is not more than 5 percent ad valorem.

(c) No proclamation shall be made pursuant to subsection (a)(2) increasing any rate of duty to, or imposing a rate above, the higher of the following:

(1) the rate which is 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States as in effect on January 1, 1975, or

(2) the rate which is 20 percent ad valorem above the rate existing on January 1, 1975.

Sec. 102. Nontariff Barriers to and Other Distortions of Trade.

(a) The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) in-

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[2] Sec. 224 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 235) provided that for purposes of this section, "the rates of duty appearing in rate column numbered 1 of the amendments, if any, made under this subtitle shall be considered to be the rates of duty existing or in effect on January 1, 1975." Sec. 502(c) of the same Act (93 Stat. 251) further provided that for purposes of this section, "the rates of duty in the rate column numbered 1 or 2 as the result of the amendments, if any, made under sections 505, 506, 509, 510, 511, and 514 shall be considered to be the rates of duty existing or in effect on January 1, 1975."

[3] However, sec. 507 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 258) stated that notwithstanding this provision, the President may proclaim under sec. 101 "a reduction to 5 cents per bushel of 56 pounds in the rate of duty applicable to yellow dent corn under the rate column numbered 1 of the Tariff Schedules of the United States, currently classified under item 130.35."

ternational trade. The President is further urged to utilize the authority granted by subsection (b) to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period [4] beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e). If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) The President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House

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[4] This time period was extended from a duration of 5 years to 13 years by sec. 1101 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 307). Therefore, this period will now extend until Jan. 3, 1988.

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of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register:

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement [5] together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interest of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) For purposes of this section—

(1) the term "barrier" includes the American selling price basis of customs evaluation and defined in section 402 or 402a of the Tariff Act of 1930, as appropriate;

(2) the term "distortion" includes a subsidy; and

(3) the term "international trade" includes trade in both goods and services.

Sec. 103. Overall Negotiating Objective.

The overall United States negotiating objective under sections 101 and 102 shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible, the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

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[5] The words "copy of the final legal text of such agreement" were substituted in lieu of "copy of such agreement" by sec. 1106(c)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 311).

Sec. 104. Sector Negotiating Objective.

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and discriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) For the purposes of this section and section 135, the Special Representative for Trade Negotiations [6] together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 135 and after consultation with interested private organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

Sec. 105. Bilateral Trade Agreements.

If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under section 101 and 102 shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.

Sec. 106. Agreements With Developing Countries.

A United States negotiating objective under sections 101 and 102 shall be to enter into trade agreements which promote the economic growth of both developing countries and the United States and the mutual expansion of market opportunities.

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[6] This position was redesignated as the United States Trade Representative pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

Sec. 107. International Safeguard Procedures.

(a) A principal United States negotiating objective under section 102 shall be to obtain internationally agreed upon rules and procedures, in the context of the harmonization, reduction, or elimination of barriers to, and other distortions of, international trade, which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement resulting from such negotiations due to the expansion of international trade.

(b) Any agreement entered into under section 102 may include provisions establishing procedures for—

(1) notification of affected exporting countries,

(2) international consultations,

(3) international review of changes in trade flows,

(4) making adjustments in trade flows as the result of such changes, and

(5) international mediation.

Such agreements may also include provisions which—

(A) exclude, under specified conditions, the parties thereto from compensation obligations and retaliation, and

(B) permit domestic public procedures through which interested parties have the right to participate.

Sec. 108. Access Supplies.

(a) A principal United States negotiating objective under section 102 shall be to enter into trade agreements with foreign countries and instrumentalities to assure the United States of fair and equitable access at reasonable prices to supplies of articles of commerce which are important to the economic requirements of the United States and for which the United States does not have, or cannot easily develop, the necessary domestic productive capacity to supply its own requirements.

(b) Any agreement entered into under section 102 may include provisions which—

(1) assure to the United States the continued availability of important articles at reasonable prices, and

(2) provide reciprocal concessions or comparable trade obligations, or both, by the United States.

Sec. 109. Staging Requirements and Rounding Authority.

(a) Except as otherwise provided in this section, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement under section 101 shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed pursuant to section 101(a)(2) to carry out such agreement with respect to such article, and

(2) a reduction equal to the amount applicable under paragraph (1) had taken effect at 1-year intervals after the effective date of such first reduction.[7]

This subsection shall not apply in any case where the total reduction in the rate of duty does not exceed 10 percent of the rate before the reduction.

(b) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitation provided by section 101(b) or subsection (a) of this section by not more than whichever of the following is lesser:

(1) the difference between the limitation and the next lower whole number, or

(2) one-half of 1 percent ad valorem.

(c)(1) No reduction in the rate of duty on any article pursuant to a trade agreement under section 101 shall take effect more than 10 years after the effective date of the first reduction proclaimed to carry out such trade agreement with respect to such article.

(2) If any part of a reduction takes effect, then any time thereafter during which any[8] part of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2), and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.

Chapter 2—Other Authority

Sec. 121. Steps To Be Taken Toward GATT Revision; Authorization of Appropriations for GATT.

(a) The President shall, as soon as practicable, take such action as may be necessary to bring trade agreements heretofore entered into, and the application thereof, into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system. The action and principles referred to in the preceding sentence include, but are not limited to, the following—

(1) the revision of decisionmaking procedures in the General Agreement on Tariffs and Trade[9] (hereinafter in this subsection referred to as "GATT") to more nearly reflect the balance of economic interests,

(2) the revision of article XIX of the GATT into a truly international safeguard procedure which takes into account all forms of import restraints countries use in response to injurious competition or threat of such competition,

(3) the extension of GATT articles to conditions of trade not presently covered in order to move toward more fair trade practices,

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[7] However, Sec. 503 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 251) lists items for which the aggregate reduction in the rate of duty may exceed the limitation contained in Sec. 109(a).

[8] The word "any" was substituted in lieu of "such" by Sec. 1106(c)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[9] See page 221, vol. III for text.

(4) the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT,

(5) the revision of GATT articles with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs,

(6) the revision of the balance-of-payments provision in the GATT articles so as to recognize import surcharges as the preferred means by which industrial countries may handle balance-of-payments deficits insofar as import restraint measures are required,

(7) the improvement and strengthening of the provisions of GATT and other international agreements governing access to supplies of food, raw materials, and manufactured or semi-manufactured products, including rules and procedures governing the imposition of export controls, the denial of fair and equitable access to such supplies, and effective consultative procedures on problems of supply shortages,

(8) the extension of the provisions of GATT or other international agreements to authorize multilateral procedures by contracting parties with respect to member or nonmember countries which deny fair and equitable access to supplies of food, raw materials, and manufactured or semi-manufactured products, and thereby substantially injure the international community,

(9) any revisions necessary to establish procedures for regular consultation among countries and instrumentalities with respect to international trade and procedures to adjudicate commercial disputes among such countries or instrumentalities,

(10) any revisions necessary to apply the principles of reciprocity and nondiscrimination, including the elimination of special preferences and reverse preferences, to all aspects of international trade,

(11) any revisions necessary to define the forms of subsidy to industries producing products for export and the forms of subsidy to attract foreign investment which are consistent with an open, nondiscriminatory, and fair system of international trade, and

(12) consistent with the provisions of section 107, any revisions necessary to establish within the GATT an international agreement on articles (including footwear), including the creation of regular and institutionalized mechanisms for the settlement of disputes, and of a surveillance body to monitor all international shipments in such articles.

(b) The President shall, to the extent feasible, enter into agreements with foreign countries or instrumentalities to establish the principles described in subsection (a) with respect to international trade between the United States and such countries or instrumentalities.

(c) If the President enters into a trade agreement which establishes rules or procedures, including those set forth in subsection (a), promoting the development of an open nondiscriminatory, and fair world economic system and if the implementation of such

agreement will change any provision of Federal law (including a material change in an administrative rule), such agreement shall take effect with respect to the United States only if the appropriate implementing legislation is enacted by the Congress unless implementation of such agreement is effected pursuant to authority delegated by Congress. Such trade agreement may be entered into under section 102.[10] Nothing in this section shall be construed as prior approval of any legislation necessary to implement a trade agreement entered into under this section.

(d) There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all articles of the General Agreement on Tariffs and Trade.

Sec. 122. Balance-of-Payments Authority.

(a) Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits,

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas as a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) or (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

(b) If the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—

(1) immediately inform Congress of his determination, and

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[10] This sentence was amended by sec. 1106(c)(2) of Public Law 96–39 (Trade Agreements Act of 1979: 93 Stat. 311). It formerly provided for the submission of the trade agreement to the Congress for approval in accordance with the procedures of section 151.

(2) immediately convene the group of congressional official advisers designated under section 161(a) and consult with them as to the reasons for such determination.

(c) Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insurance-freight value of imports as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets.

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value of quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction.

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d)(1) Import restricting actions proclaimed pursuant to subsection (a) shall be applied consistently with the principle of nondiscriminatory treatment. In addition, any quota proclaimed pursuant to subparagraph (B) of subsection (a) shall be applied on a basis which aims at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions.

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action.

(3) After such time when there enters into force for the United States new rules regarding the application of surcharges as part of a reform of internationally agreed balance-of-payments adjustments procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of broad and uniform application with respect to product coverage except where the President determines, consistently

with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors. In addition, uniform exceptions may be made where import restricting actions will be unnecessary or ineffective in carrying out the purposes of this section, such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(f) Any quantitative limitation proclaimed pursuant to subparagraph (B) or (C) of subsection (a) on the quantity or value, or both, of an article—

(1) shall permit the importation of a quantity or value which is not less than the quantity or value of such article imported into the United States from the foreign countries to which such limitation applies during the most recent period which the President determines is representative of imports of such article, and

(2) shall take into account any increase since the end of such representative period in domestic consumption of such article and like or similar articles of domestic manufacture or production.

(g) The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation under this section either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress.

(h) No provision of law authorizing the termination of tariff concessions shall be used to impose a surcharge on imports into the United States.

Sec. 123. Compensation Authority.

(a) Whenever any action has been taken under section 203 to increase or impose any duty or other import restriction, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(2) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.

(b)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

(2) Where the rate of duty in effect at any time is an intermediate stage under section 109, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at

each such stage proclaimed under section 101 by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under section 101.

(3) If the President determines that such action will simplify the computation of the amount of duty imposed with a respect to an article he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant import relief under section 203(h).

(c) Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(d) Notwithstanding the provisions of subsection (a), the authority delegated under section 101 shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

Sec. 124. Two-Year Residual Authority to Negotiate Duties.

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this Act will be promoted thereby, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities thereof, and

(2) may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Agreements entered into under this section in any 1-year period shall not provide for the reduction of duties, or the continuance of duty-free or excise treatment, for articles which account for more than 2 percent of the value of the United States imports for the most recent 12-month period for which import statistics are available.

(c)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 80 percent of the existing rate of duty.

(2) No proclamation shall be made pursuant to subsection (a) decreasing or increasing any rate of duty to a rate which is lower or higher than the corresponding rate which would have resulted if the maximum authority granted by section 101 with respect to such article had been exercised.

(3) Where the rate of duty in effect at any time is an intermediate stage under section 109, the proclamation made pursuant to

subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section 101 by not more than 20 percent of such rate of duty, and, subject to the limitation in paragraph (2), may provide for a final rate of duty which is not less than 80 percent of the rate of duty proclaimed as the final stage under section 101.

(4) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(d) Agreements may be entered into under this section only during the 2-year period which immediately follows the close of the period during which agreements may be entered into under section 101.

Sec. 125. Termination and Withdrawal Authority.[11]

(a) Every trade agreement entered into under this Act shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

(b) The President may at any time terminate in whole or in part, any proclamation made under this Act.

(c) Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962[12] or section 350 of the Tariff Act of 1930,[13] withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(d) Whenever any foreign country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation therefor, the President, in pursuance of rights grant-

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[11] Secs. 502(b), 601(b), and 855(b) of Public Law 96–39 (Trade Agreements Act of 1979) stated that for purposes of sec. 125 of this Act, amendments made by specified sections of Public Law 96–39 shall be considered to be trade agreement obligations entered into under the Trade Act of 1974, of benefit to foreign countries or instrumentalities.

[12] 19 U.S.C. 1821. See page 110 for text.

[13] 19 U.S.C. 1351. See page 144 for text.

ed to the United States under any trade agreement and to the extent necessary to protect United States economic interests (including United States balance of payments), may—

(1) withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality, and

(2) proclaim under subsection (c) such increased duties or other import restrictions as are appropriate to effect adequate compensation from such foreign country or instrumentality.

(e) Duties or other import restrictions required or appropriate to carry out any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962,[12] or section 350 of the Tariff Act of 1930[13] shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States for such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress his recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) Before taking any action pursuant to subsection (b), (c), or (d), the President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard, unless he determines that such prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

Sec. 126. Reciprocal Nondiscriminatory Treatment.

(a) Except as otherwise provided in this Act or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title shall apply to products of all foreign countries, whether imported directly or indirectly.

(b) The President shall determine, after the conclusion of all negotiations entered into under this Act or at the end of the 5-year period beginning on the date of enactment of this Act, whichever is earlier, whether any major industrial country has failed to make concessions under trade agreements entered into under this Act which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under this Act, for the commerce of such country in the United States.

(c) If the President determines under subsection (b) that a major industrial country has not made concessions under trade agreements entered into under this Act which provide substantially equivalent competitive opportunities for the commerce of the United States, he shall, either generally with respect to such country or by article produced by such country, in order to restore

equivalence of competitive opportunities, recommend to the Congress—

(1) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under this Act made with respect to rates of duty or other import restrictions by the United States; and

(2) that any legislation necessary to carry out any trade agreement under section 102 shall not apply to such country.

(d) For purposes of this section, "major industrial country" means Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President for purposes of this subsection.

Sec. 127. Reservation of Articles for National Security or Other Reasons.

(a) No proclamation shall be made pursuant to the provisions of this Act reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) While there is in effect with respect to any article any action taken under section 203 of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133, where applicable.

(c)[14] The President shall submit to the Congress an annual report on section 232 of the Trade Expansion Act of 1962. Within 60 days after he takes any action under such section 232, the President shall report to the Congress the action taken and the reasons therefor.

(d) * * *[15]

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CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

Sec. 131. International Trade Commission Advice.

(a) In connection with any proposed trade agreement under chapter 1 or section 123 or 124, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of arti-

[14] 19 U.S.C. 1863.

[15] Subsection (d) provided for an amendment to sec. 232 of the Trade Expansion Act of 1962. See page 111 for text of sec. 232.

cles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this title pursuant to which such consideration may be given.

(b) Within 6 months after receipt of such a list or, in the case of a list submitted in connection with a trade agreement authorized under section 123, within 90 days after receipt of such list, the Commission shall advise the President with respect to each article of its judgment as to the probable economic effect of modifications of duties on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States manufacturing, agriculture, mining, fishing, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period than the minimum periods provided by section 109(a).

(c) In addition, in order to assist the President in his determination of whether to enter into any agreement under section 102, the Commission shall make such investigations and reports as may be requested by the President, including, where feasible, advice as to the probable economic effects of modifications of any barrier to (or other distortion of) international trade on domestic industries and purchasers and on prices and quantities of articles in the United States.

(d) In preparing its advice to the President under this section, the Commission shall, to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles;

(2) analyze the production, trade, and consumption of each like or directly competitive article, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, and consumers, utilizing to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

Sec. 132. Advice from Departments and Other Sources.

Before any trade agreement is entered into under chapter 1 or section 123 or 124, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, and the Treasury, from the Special Representative for Trade Negotiations,[16] and from such other sources as he may deem appropriate.

Sec. 133. Public Hearings.

(a) In connection with any proposed trade agreement under chapter 1 or section 123 or 124, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 131, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings.

(b) The organization holding such hearings shall furnish the President with a summary thereof.

Sec. 134. Prerequisites for Offers.

In any negotiations seeking an agreement under chapter 1 or section 123 or 124, the President may make an offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restriction, or other barrier to (or other distortion of) international trade, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the International Trade Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

Sec. 135. Advice from Private Sector.

(a) The President[17] shall seek information and advice from representative elements of the private sector with respect to negotiat-

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[16] This latter position was redesignated as the United States Trade Representative pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

[17] The words "in accordance with the provisions of this section," which formerly appeared at this point, were struck out by sec. 1103(1) of Public Law 96-39 (Trade Agreements Act of 1979: 93 Stat. 308).

ing objectives and bargaining positions before entering into a trade agreement referred to in section 101 or 102, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.[18]

(b)(1) The President shall establish an Advisory Committee for Trade Negotations to provide overall policy advice on matters referred to in subsection (a).[19] The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

(2)[20] The Committee shall meet at the call of the Special Representative for Trade Negotiations.[16] The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

(3) The Special Representative for Trade Negotiations[16] shall make available to the Committee such staff, information, personnel and administrative services and assistance as it may reasonably require to carry out its activities.

(c)(1)[20] The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture, or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business interests, and shall be organized by the Special Representative for Trade Negotiations[16] and the Secretary of Commerce, Labor or Agriculture, as appropriate.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned.[21] In organizing such committees the Special Representative for Trade Negotiations[16] and the Secretary of Commerce, Labor, or Agriculture, as appropriate,[22] (A) shall consult with interested private organizations, and (B) shall take into account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the nontariff barriers and other distortions affecting such competi-

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[18] The words to this point beginning with ", with respect to" were added by sec. 1103(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 308).

[19] The words "matters referred to in subsection (a)" were substituted in lieu of the words "any trade agreement referred to in section 101 or 102" by sec. 1103(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 308).

[20] Subsecs. (b)(2) and (c)(1) were amended and restated by sec. 1103 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 308).

[21] The first two sentences of subsec. (c)(2) were amended and restated by sec. 1103(6) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[22] As amended by sec. 1103(7) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309). Previously, the President, acting through the Special Trade Representative, participated in the organization of the committees.

tion, the necessity for reasonable limits on the number of such[23] advisory committees, the necessity that each committee be reasonably limited in size, and that, in the case of each sectoral committee[24] the product lines covered by each committee be reasonably related.

(d)[25] Committees established under subsection (c) shall meet at the call of the Special Representative for Trade Negotiations[16] and the Secretary of Agriculture, Commerce, or Labor, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) The Advisory Committee for Trade Negotiations, each appropriate policy advisory committee, and each sector or functional advisory committee, if the sector or area[26] which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this Act, to provide to the President, to Congress, and to the Special Representative for Trade Negotiations[16] a report on such agreement. The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and the report of the appropriate sector or functional area[27] committee shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.[27][28]

(f) The provisions of the Federal Advisory Committee Act (Public Law 92-463)[29] shall apply—

(1) to the Advisory Committee for Trade Negotiations established pursuant to subsection (b); and

(2) to all other advisory committees which may be established pursuant to subsection (c); except that the meetings of advisory committees[30] established under subsection (c) shall be exempt from the requirements of subsections (a) and (b) of section 10 and section 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiat-

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[23] The words "product sector" which previously appeared at this point, were struck out by sec. 1103(8) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[24] The words ", in the case of each sectoral committee" were added by sec. 1103(9) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[25] Subsec. (d) was amended and restated by sec. 1103(10) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[26] The words "and each sector or functional advisory committee, if the sector or area" were substituted in lieu of the words "and each sector advisory committee, if the sector" by sec. 1103(11) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[27] The reference to "functional area" was added by sec. 1103 (12) and (13) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[28] Subsec. (e)(2), which required a report to Congress from the Advisory Committee for Trade Negotiations, each policy advisory committee, and each sector advisory committee, was struck out by sec. 1103(14) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[29] 5 U.S.C. App. 1.

[30] The word "committees" was substituted in lieu of the word "groups" by sec. 1103(15)(A) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

ing objectives or bargaining positions with respect to matters referred to in subsection (a).[31]

(g)(1)(A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the Special Representative for Trade Negotiations,[16] and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161(a) or are designated by the chairman of either such committee under section 161(b)(2), and members of the staff of either such committee designated by the chairman under section 161(b)(2),

for use in connection with negotiation of matters referred to in subsection (a).[32]

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a)[32] shall not be disclosed to any person other than—

(i) the individuals described in subparagraph (A), and

(ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the Special Representative for Trade Negotiations[16] and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).[30]

(h) The Special Representative for Trade Negotiations,[16] and the Secretary of Commerce, Labor, or Agriculture, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established pursuant to subsection (c) as such committees may reasonably require to carry out their activities.

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[31] The words "with respect to matters referred to in subsection (a)" were substituted in lieu of the words "on the negotiation of any trade agreement" by sec. 1103(15)(B) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[32] The reference to matters discussed in subsection (a) was added by sec. 1103 (16), (17), (18) and (19) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

(i) It shall be the responsibility of the Special Representative for Trade Negotiations,[16] in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) on a continuing and timely basis.[33] Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments,[34] and (2) overall negotiating objectives and positions of the United States and other parties with respect to matters referred to in subsection (a).[32] The Special Representative for Trade Negotiations[16] shall not be bound by the advice or recommendations of such advisory committees but the Special Representative for Trade Negotiations[16] shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 163, a report by the Special Representative for Trade Negotiations[16] on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g), confidential basis by private organizations or groups, representing labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiations of any matters referred to in section (a).[32]

(k) Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a).[32] To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate, but may not speak or negotiate for the United States.[35]

(l)[36] The provisions of title XVIII of the Food and Agriculture Act of 1977 shall not apply to an advisory committee established under subsection (c).

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[33] The words, ", both during preparation for negotiations and actual negotiations", which previously appeared at this point, were struck out by sec. 1103(8)(A) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[34] The words, "arising in preparation for or in the course of such negotiations", which previously appeared at this point, were struck out by sec. 1103(18)(B) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 309).

[35] This sentence was added by sec. 1103(19) of Public Law 96-39 (Trade Agreements Act of 1979; Stat. 310).

[36] Subsec. (l) was added by sec. 1103(20) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 310).

CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE [37]

Sec. 141. Office of the Special Representative for Trade Negotiations.

(a) There is established within the Executive Office of the President the Office of the United States Trade Representatives[38] (hereinafter in this section referred to as the "Office").

(b)(1) The Office shall be headed by the United States Trade Representative[38] who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative[38] submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative[38] shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives[39] who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative[39] submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative[39] shall hold the office at the pleasure of the President and shall have the rank of Ambassador.

(3)[40] * * * [Repealed—1982]

(c)(1) The United States Trade Representative[38] shall—

(A) be the chief representative of the United States for each trade negotiation under this title or section 301;

(B) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930;

(C) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(D) be responsible for making reports to Congress with respect to the matters set forth in subparagraphs (A) and (B);

(E) be chairman to the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962; and

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[37] This chapter designation was substituted in lieu of "Office of the Special Representative for Trade Negotiations" by sec. 3(d)(3) of Public Law 97-456 (96 Stat. 2503).

[38] Sec. 3(d)(2)(D) or Public Law 97-456 (96 Stat. 2503) substituted the reference to the United States Trade Representative in lieu of a reference to the Special Representative for Trade Negotiations.

[39] Sec. 3 of Public Law 97-456 (96 Stat. 2503) inserted the reference to the Deputy United States Trade Representative in lieu of a reference to the Deputy Special Representatives for Trade Negotiations and increased the number of deputies in the office of the USTR from two to three.

[40] Sec. 3(d)(1) of Public Law 97-456 (96 Stat. 2503) repealed par. (3) which had previously contained an amendment to 5 U.S.C. 5312 and 5314.

(F) be responsible for such other functions as the President may direct.

(2)[41] The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

(3)[41] Each Deputy United States Trade Representative[42] shall have as his principal function the conduct of trade negotiations under this Act and shall have such other functions as the United States Trade Representative[38] may direct.

(d) The United States Trade Representative[38] may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties[43] vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the Special Representative for Trade Negotiations[38] may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(7) adopt an official seal, which shall be judicially noticed;

(8)[44] pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5, United States

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[41] Sec. 3(b)(1) of Public Law 97–456 (96 Stat. 2503) redesignated existing par. (2) as par. (3) and added a new par. (2).

[42] Sec. 3(d)(2)(C) of Public Law 97–456 (96 Stat. 2503) substituted the reference to the Deputy United States Trade Representative in lieu of a reference to the Deputy Special Representative for Trade Negotiations.

[43] Sec. 3(b)(2) of Public Law 97–456 (96 Stat. 2503) inserted the words ", powers and duties".

[44] Paragraphs (8)–(10) were added by Sec. 3(b)(5) of Public Law 97–456 (96 Stat. 2503).

Code (relating to rates of per diem allowances in lieu of subsistence expenses);

(9)[44] accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office; and

(10)[44] acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500.

(e) The United States Trade Representative[38] shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(f)[45](1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions $11,100,000 for fiscal year 1983; of which not to exceed $65,000 may be used for entertainment and representation expenses.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

(g)[46] * * * [Repealed—1982]

(h)[46] * * * [Repealed—1982]

Chapter 5—Congressional Procedures With Respect to Presidential Actions

Sec. 151. Bills Implementing Trade Agreements of Nontariff Barriers and Resolutions Approving Commercial Agreements With Communist Countries.

(a) Rules of House of Representatives and Senate.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenue bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

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[45] Sec. 3(a) of Public Law 97-456 (96 Stat. 2503) amended and restated subsec. (f) by adding the authorization level for fiscal year 1983 and language in par. (2) concerning salaries. Previously, subsec. (f) had authorized funds for the Office in "such amounts as may be necessary" for fiscal years 1976–1980.

[46] Sec. 3(d)(1) of Public Law 97-456 (96 Stat. 2503) repealed subsections (g) and (h). These provisions concerned the abolishment and transfer of duties of the Office of Special Representative for Trade Negotiations established under Executive Order 11075 of January 15, 1963.

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements submitted to the House of Representatives and the Senate under section 102 and which contains—

(A) a provision approving such trade agreement or agreements,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(2) The term "implementing revenue bill" means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term "approval resolution" means only a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of nondiscriminatory treatment with respect to the products of ..... transmitted by the President to the Congress on .....", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement is submitted to the House of Representatives and the Senate under section 102, the implementing bill submitted by the President with respect to such trade agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilatera! commercial agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to

such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) AMENDMENTS PROHIBITED.—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriation calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be referred to the appropriate committee or committees of the Senate. If such committees have not reported such bill at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill was introduced in the Senate), such committee or committees shall be automatically discharged from further considera-

tion of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill or approval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the

time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

Sec. 152. Resolutions Disapproving Certain Actions.

(a) CONTENTS OF RESOLUTIONS.—

(1) For purposes of this section, the term "resolution" means only—

(A)[47] a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203, of the Trade Act of 1974 transmitted to the Congress on .....", the blank space being filled with the appropriate date; and

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ..... does not approve ..... transmitted to the Congress on .....", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with pargraph (2),[48] and the third blank space being filled with the appropriate date.

(2)[49] The second blank space referred to in paragraph (1)(B) shall be filled as follows:

(A) in the case of a resolution referred to in section 303(c) of the Tariff Act of 1930,[50] with the phrase "the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930";

(B) in the case of a resolution referred to in section 407(c)(2), with the phrase "the extension of nondiscriminatory treatment with respect to the products of ....." (with this blank space being filled with the name of the country involved); and

(C) in the case of a resolution referred to in section 407(c)(3), with the phrase "the report of the President submitted under section ..... of the Trade Act of 1974 with respect to ....." (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

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[47] Par. (1)(A) was amended and restated by sec. 902(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 299).

[48] The reference to par. (2) was substituted in lieu of a reference to par. (3) by sec. 902(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300).

[49] Sec. 902(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300) struck out par. (2) and redesignated par. (3) as par. (2).

[50] Repealed by sec. 103(b)(2) of the Trade Agreements Act of 1979.

(b) REFERENCES TO COMMITTEES.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) DISCHARGE OF COMMITTEES.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 154(b),[51] it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of

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[51] The reference to sec. 154(b) was substituted in lieu of a reference to sec. 153(b) by sec. 1106(c)(5) of Public Law 96–39 (Trade Agreements Act of 1979; 93 Stat. 312).

the House of Representatives applicable to other resolutions in similar circumstances.

(e) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommend a resolution is in order in the Senate.

(f) SPECIAL RULE FOR CONCURRENT RESOLUTIONS.—In the case of a resolution described in subsection (a)(1), if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

Sec. 153. Resolutions Relating to Extension of Waiver Authority Under Section 402.

(a) CONTENTS OF RESOLUTIONS.—For purposes of this section, the term "resolution" means only—

(1) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of the authority contained in section 402(c)(1) of the Trade Act of 1974 recommended by the President to the Congress on .....", except with respect to .....", with the first blank space being filled with the appropriate date and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the except clause being omitted if there is no such country; and

(2) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ..... does not approve the extension of the authority

contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ..... with respect to .....", with the first blank space being filled with the name of the resolving House, the second blank space being filled with the appropriate date, and the third blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the with-respect-to clause being omitted if the extension of the authority is not approved with respect to any country.

(b) APPLICATION OF RULES OF SECTION 152; EXCEPTIONS.—

(1) Except as provided in this section, the provisions of section 152 shall apply to resolutions described in subsection (a).

(2) In applying section 152(c)(1), all calendar days shall be counted, and, in the case of a resolution related to section 402(d)(4), 20 calendar days shall be substituted for 30 days.

(3) That part of section 152(d)(2) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting an except clause, in the case of a resolution described in subsection (a)(1), or a with-respect-to clause, in the case of a resolution described in subsection (a)(2). Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting an except clause, in the case of a resolution described in subsection (a)(1), or a with-respect-to clause, in the case of a resolution described in subsection (a)(2). The time limit on a debate on a resolution in the Senate under section 152(e)(2) shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d) (other than a resolution described in subsection (a)(1) received from the other House), if that

House has adopted a resolution with respect to the same recommendation.

Sec. 154. Special Rules Relating to Congressional Procedures.

(a) Whenever, pursuant to section 102(e), 203(b),[52] 402(d), or 407 (a) or (b), section 303(e) of the Tariff Act of 1930, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c),[53] 407(c)(2), and 407(c)(3), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

Chapter 6—Congressional Liaison and Reports

Sec. 161. Congressional Delegates to Negotiations.

(a) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select five members (not more than three of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select five members (not more than three of whom are members of the same political party) of such committee, who shall be accredited by the President as official advisers to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements.

(b)(1) The Special Representative for Trade Negotiations[54] shall keep each official adviser currently informed on United States negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.[55]

(2) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

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[52] A reference to sec. 302(a) which previously appeared at this point, was struck out by sec. 902(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300).

[53] A reference to sec. 302(b), which previously appeared at this point, was struck out by sec. 902(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300).

[54] This position was redesignated as the United States Trade Representative pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

[55] The words to this point beginning with "or any requirement of," were added by sec. 3(e) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 150).

Sec. 162. Transmission of Agreements to Congress.

(a) As soon as practicable after a trade agreement entered into under chapter 1 or section 123 or 124 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of the other relevant considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

Sec. 163. Reports.

(a) The President shall submit to the Congress an annual report on the trade agreements program and on import relief and adjustment assistance for workers, firms, and communities under this Act. Such report shall include information regarding new negotiations; changes made in duties and nontariff barriers and other distortions of trade of the United States; reciprocal concessions obtained; changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor); extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of a foreign country; extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries; the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States services industries (including transportation and tourism) and investment; and the measures being taken to seek the removal of other significant foreign import restrictions; and other information relating to the trade agreements program and to the agreements entered into thereunder. Such report shall also include information regarding the number of applications filed for adjustment assistance for workers, firms, and communities, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.[56]

(b) The International Trade Commission shall submit to the Congress, at least one a year, a factual report on the operation of the trade agreements program.

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[56] Sec. 304(d)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 239) specified that this annual report should also include any actions the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

CHAPTER 7—UNITED STATES INTERNATIONAL TRADE COMMISSION [57]

Sec. 171. Change of Name of Tariff Commission.

(a) The United States Tariff Commission (established by section 330 of the Tariff Act of 1930) is renamed as the United States International Trade Commission.

(b) Any reference in any law of the United States, or in any order, rule, regulation, or other document, to the United States Tariff Commission (or the Tariff Commission) shall be considered to refer to the United States International Trade Commission.

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Sec. 175. Independent Budget and Authorization of Appropriations.

(a)(1) Effective with respect to the fiscal year beginning October 1, 1976, for purposes of the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), estimated expenditures and proposed appropriations for the United States International Trade Commission shall be transmitted to the President on or before October 15 of the year preceding the beginning of each fiscal year and shall be included by him in the Budget without revision, and the Commission shall not be considered to be a department or establishment for purposes of such Act.

(2) * * *

(b) * * *

(c)(1) Paragraph (2) is enacted as an exercise of the rulemaking power of the Senate and with full recognition of the constitutional right of the Senate to change its rules at any time.

(2) Paragraph 6(a) of rule XVI of the Standing Rules of the Senate is amended by adding at the end of the table contained therein the following:

"Committee on Finance ..... For the International Trade Commission.".

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—IMPORT RELIEF

Sec. 201. Investigation by International Trade Commission.

(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the International Trade Commission (hereinafter in this chapter referred to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

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[57] For the most part, ch. 7 contains amendments to sec. 330-333 of the Tariff Act of 1930. For text of these amendments and other material relating to the U.S. International Trade Commission, see page 127.

(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the Special Representative for Trade Negotiations [58] and the agencies directly concerned.

(b)(1) Upon the request of the President or the Special Representative for Trade Negotiations,[51] upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry;

(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(4) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

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[58] This position was redesignated as the United States Trade Representative pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 202 and 203, investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports.

(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930,[59] or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(c) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(d)(1) The Commission shall report to the President its findings under subsection (b), and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, or

(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively remedy such injury, recommend the provision of such assistance.

and shall include such findings or recommendation in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which were submitted in connection with each investigation.

(2) The report of the Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

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[59] References to the Antidumping Act, 1921, and to sec. 303 of the Tariff Act of 1930 were struck out and replaced by the reference to subtitles A and B of title VII by sec. 106(b)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 193).

(f)(1) Any investigation by the Commission under section 301(b) of the Trade Expansion Act of 1962 [60] (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of enactment shall be continued under this section in the same manner as if the investigation had been instituted originally under the provisions of this section. For purposes of subsection (d)(2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request or resolution as having been received or the motion having been adopted, as the case may be, on the date of the enactment of this Act.

(2) If, on the date of the enactment of this Act, the President has not taken any action with respect to any report of the Commission containing an affirmative determination resulting from an investigation under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act), such report shall be treated by the President as a report received by him under this section on the date of the enactment of this Act.

Sec. 202. Presidential Action After Investigations.

(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the President—

(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, and

(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapters 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

(b) Within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 201(b) (or a finding under section 201(b) which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period), the President shall—

(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

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[60] This section was repealed by sec. 602(d) of this act.

(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

(c) In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(5) the effect of import relief on the international economic interests of the United States;

(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(7) the geographic concentration of imported products marketed in the United States;

(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(d) The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

Sec. 203. Import Relief.

(a) If the President determines to provide import relief under section 202(a)(1), he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to

facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

(2) proclaim a tariff-rate quota on such article;

(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

(4) negotiate, conclude and carry out[61] orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

(5) take any combination of such actions.

(b)(1) On the day the President determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement,[62] the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201(d)(1)(A),[63] he shall state the reason for such difference.

(2) On the day on which the President determines that the provision of import relief is not in the national economic interest of the United States, the President shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

(3)[64] On the day on which the President proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

(c)(1) If the President reports under subsection (b) that he is taking action which differs from the action recommended by the Commission under section 201(d)(1)(A),[63] or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon the adoption by both Houses of Congress (within the 90-day period following the date on which the document referred to in subsection (b) is transmitted to the Congress), by an affirmative vote of a majority of the Members of each House present and voting under procedures set forth in section 152,[65] of a concurrent resolution disapproving the

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[61] The words ", conclude and carry out" were added by sec. 1105(d)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[62] The text of subsec. (b) to this point was amended and restated by sec. 1105(d)(2)(A) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[63] The reference to sec. 201(d)(1)(A) was substituted in lieu of a reference to sec. 201(b)(1)(A) by sec. 1105(d) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[64] Par. (3) was added by sec. 1105(d)(2)(C) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[65] The words "under procedures set forth in section 152" were added by sec. 1105(d)(3)(B) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

action taken by the President or his determination not to provide import relief under section 202(a)(1)(A).

(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 201(b).

(d)(1) No proclamation pursuant to subsection (a) or (c) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

(2) Any quantitative restriction proclaimed pursuant to subsection (a) or (c) and any orderly marketing agreement negotiated pursuant to subsection (a) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

(e)(1) Import relief under this section shall be proclaimed and take effect within 15 days after the import relief determination date unless the President announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

(2) If the President provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

(3) If the President negotiates an orderly marketing agreement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a).[66]

(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 202(b).

(f)(1) For purposes of subsections (a) and (c), the suspension of item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article shall be treated as an increase in duty.

(2) For purposes of subsections (a) and (c), the suspension of the designation of any article as an eligible article for purposes of title V shall be treated as an increase in duty.

(3) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or di-

[66] References to pars. (1), (2), (3), and (5) of subsec. (a) were struck out by sec. 1105(d)(4) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

rectly competitive article results from the application of item 806.30 or item 807.00.

(4) No proclamation which provides solely for a suspension referred to in paragraph (2) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the designation of the article as an eligible article for the purposes of title V.

(g)(1) The President shall by regulations provide for the efficient and fair administration of any[67] restriction proclaimed pursuant to this section.[68]

(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3)[69] the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3)[69] with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(h)(1) Any import relief provided pursuant to this section shall, unless renewed pursuant to paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section.

(2) To the extent feasible, any import relief provided pursuant to this section for a period of more than 3 years shall be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect.

(3) Any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years[70] if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) or

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[67] The word "quantitative", which previously appeared at this point, was struck out by sec. 1105(d)(5)(A) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[68] The words "pursuant to this section" were substituted in lieu of the words "pursuant to subsection (a)(3) or (c)" by sec. 1105(d)(5)(B) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[69] The reference to subsec. (e)(3) was added by sec. 1105(d)(6) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[70] The words "one period of not more than 3 years" were substituted in lieu of the words "one 3 year period" by sec. 1105(d)(7)(B) of Public Law 96-39 (Trade Agreements Act of 1979 (93 Stat. 312).

(i)(3)[71] and after taking into account the considerations described in section 202(c), that such extension is in the national interest.

(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3)[71] and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

(5) For purposes of this subsection and subsection (i), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

(i)(1) So long as any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962[62] remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(j) No investigation for the purposes of section 201 shall be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the last day on which import relief was provided with respect to such article pursuant to this section.

(k)(1) Actions by the President pursuant to this section may be taken without regard to the provisions of section 126(a) of this Act

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[71] The reference to subsec. (i)(3) was added by sec. 1105(d)(7)(A) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 201(b)(3)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

SUBCHAPTER A—PETITIONS AND DETERMINATIONS

Sec. 221. Petitions.

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

Sec. 222. Group Eligibility Requirements.

The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof were a substantial cause of[72] such total or partial separation, or threat thereof, and of such decline in sales or production.

For purposes of paragraph (3), the term "substantial cause" means a cause which is important and not less than any other cause.[73]

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[72] The words "were a substantial cause of" were substituted in lieu of the words "contributed importantly to" by sec. 2501(1) of Public Law 97-35 (95 Stat. 881). Sec. 2514(a)(2)(A) of Public Law 97-35 further stated this amendment would apply with respect to all petitions for certification filed under sec. 221 on or after the 180th day after the date of enactment of this Act (Public Law 97-35 enacted on Aug. 13, 1981).

[73] This sentence was amended and restated by sec. 2501(2) of Public Law 97-35 (95 Stat. 881). Sec. 2514(a)(2)(A) of Public Law 97-35 further stated this amendment would apply with respect to all petitions for certification filed under sec. 221 on or after the 180th day after the date of enactment of this Act (Public Law 97-35 enacted on Aug. 13, 1981).

Sec. 223. Determinations by Secretary of Labor.

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

Sec. 224. Study by Secretary of Labor When International Trade Commission Begins Investigation.[74]

(a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which

[74] The words "; Action Where There is Affirmative Finding" were struck from the section heading of sec. 224 by sec. 2513(a)(2) of Public Law 97-35 (95 Stat. 889).

the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) * * * [Repealed—1981][75]

Sec. 225.[76] Benefit Information to Workers.

The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

SUBCHAPTER B—PROGRAM BENEFITS

[Sections 231–238; 19 U.S.C. 2291–2298.]

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SUBCHAPTER C—GENERAL PROVISIONS

[Sections 239–250; 19 U.S.C. 2311–2322.]

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Sec. 246. Transitional Provisions.

(a) Where a group of workers has been certified as eligible to apply for adjustment assistance under section 302(b)(2) or (c) of the Trade Expansion Act of 1962,[77] any worker who has not had an application for trade readjustment allowances under section 322 of that Act[77] denied before the effective date of this chapter may apply under section 231 of this Act as if the group certification under which he claims coverage had been made under subchapter A of this chapter.

(b) In any case where a group of workers or their certified or recognized union or other duly authorized representative has filed a petition under section 301(a)(2) of the Trade Expansion Act of 1962,[70] more than 4 months before the effective date of this chapter and

(1) the Commission has not rejected such petition before the effective date of this chapter, and

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[75] Subsec. (c), which concerned benefit information to workers now covered in sec. 225, was repealed by sec. 2513(a)(1) of Public Law 97–35 (95 Stat. 889).

[76] Sec. 225 was added by sec. 2502 of Public Law 97–35 (95 Stat. 881).

[77] Repealed as of Apr. 3, 1975 by sec. 602(e) of this Act.

(2) the President or his delegate has not issued a certification under section 302(c) of that Act[77] to the petitioning group before the effective date of this chapter.

such group or representative thereof may file a new petition under section 221 of this Act, not later than 90 days after the effective date of this chapter. For purposes of section 223(b)(1), the date on which such group or representative filed the petition under the Trade Expansion Act of 1962 shall apply. Section 223(b)(2) shall not apply to workers covered by a certification issued pursuant to a petition meeting the requirements of this subsection.

(c) A group of workers may file a petition under section 221 covering weeks of unemployment (as defined in the Trade Expansion Act of 1962) beginning before the effective date of this chapter, or covering such weeks and also weeks of unemployment beginning on or after the effective date of this chapter.

(d) Any worker receiving payments pursuant to this section shall be entitled—

(1) for weeks of unemployment (as defined in the Trade Expansion Act of 1962) beginning before the effective date of this chapter, to the rights and privileges provided in chapter 3 of title III of such Act, and

(2) for weeks of unemployment beginning on or after the effective date of this chapter, to the rights and privileges provided in this chapter, except that the total number of weeks of unemployment for which an adversely affected worker is eligible for which trade readjustment allowances were payable under that Act shall be deducted from the total number of weeks of unemployment for which an adversely affected worker is eligible for trade readjustment allowances under this chapter.

(e) The Commission shall make available to the Secretary on request data it has acquired in investigations under section 301 of the Trade Expansion Act of 1962[77][78] concluded within the 2-year period ending on the effective date of this chapter which did not result in Presidential action under section 302(a)(3)[78] or 302(c)[77] of that Act.

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CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

Sec. 251. Petitions and Determinations.

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the

[78] Repealed by sec. 602(d) of this Act.

Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c) The Secretary shall certify a firm as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(d) A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 60 days after that date.

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Sec. 264. Study by Secretary of Commerce When International Trade Commission Begins Investigation; Action Where There Is Affirmative Finding.

(a) Whenever the Commission begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section 201(b) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

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CHAPTER 5—MISCELLANEOUS PROVISIONS

Sec. 280. General Accounting Office Report.

(a) The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under chapters 2, 3, and 4 of this title and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this title.

Sec. 281. Coordination.

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy Special Trade Representative [79] as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

Sec. 282. Trade Monitoring System.

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles into the United States which will reflect changes in the volume of such imports, the relation of such imports to changes in domestic production, changes in employment within domestic industries producing articles like or directly competitive with such imports, and the extent to which such changes in production and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

Sec. 283. Firms Relocating in Foreign Countries.

Before moving productive facilities from the United States to a foreign country, every firm should—

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[79] This position was redesignated as the Deputy United States Trade Representative pursuant to sec. 1(c) of Reorganization Plan No. 3 of 1979.

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b) It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this title,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

Sec. 284.[80] Judicial Review.

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit [80] as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit[80] shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.

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[80] The words "Court of Appeals for the Federal Circuit" were substituted in lieu of "Court of Customs and Patent Appeals" by sec. 163(a)(5) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49).

Sec. 285.[81] Effective Date.

Chapters 2, 3, and 4 of this title shall become effective on the 90th day following the date of enactment of this Act and chapters 2 and 3 shall terminate on September 30, 1983. Chapter 4 shall terminate on September 30, 1982.[82]

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES[83]

Sec. 301.[83] Determinations and Action by President.

(a) DETERMINATIONS REQUIRING ACTION.—If the President determines that action by the United States is appropriate—

(1) to enforce the rights of the United States under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and

(2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) PRESIDENTIAL PROCEDURES.—

(1) ACTION ON OWN MOTION.—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless

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[81] Sec. 613(a) of Public Law 96-417 (94 Stat. 1746) redesignated sec. 284 as sec. 285 and added a new sec. 284.

[82] Sec. 2512 of Public Law 97-35 (95 Stat. 888) extended the termination date of chs. 2 and 3 from Sept. 30, 1982, to Sept. 30, 1983.

[83] Ch. 1 of title III of this Act was amended and restated by sec. 901 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 295). Former secs. 301 and 302, entitled "Responses to Certain Trade Practices of Foreign Governments" and "Procedure for Congressional Disapproval of Certain Actions Taken Under Section 301," respectively, were replaced while new secs. 303-306 were added.

he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Special Representative[84] under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(d) SPECIAL PROVISIONS.—

(1) DEFINITION OF COMMERCE.—For purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.

(2) VESSEL CONSTRUCTION SUBSIDIES.—An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

Sec. 302.[83] Petitions for Presidential Action.

(a) FILING OF PETITION WITH SPECIAL REPRESENTATIVE.—Any interested person may file a petition with the Special Representative for Trade Negotiations[85] (hereinafter in this chapter referred to as the "Special Representative") requesting the President to take action under section 301 and setting forth the allegations in support of the request. The Special Representative[84] shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) DETERMINATIONS REGARDING PETITIONS.—

(1) NEGATIVE DETERMINATION.—If the Special Representative[84] determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) AFFIRMATIVE DETERMINATION.—If the Special Representative[84] determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised.[86] The Special Representative[84] shall publish the text of

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[84] This position (which refers to the Special Representative for Trade Negotiations) was redesignated as Trade Representative (referring to the United States Trade Representative) pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

[85] This position was redesignated as the United States Trade Representative by sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

[86] Sec. 903 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300) stated that in the case of any petition for review filed with the Special Representative prior to the effective date of amendments made to this chapter by sec. 901 of Public Law 96-39 (July 26, 1979), such petition for review should be treated as an investigation initiated on July 26, 1979, under this subsection and that any information developed by, or submitted to, the Special Representative before July 26, 1979, under the review should be treated as part of the information developed during such investigation.

the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner.

Sec. 303.[83] Consultation Upon Initiation of Investigation.

On the date an affirmative determination is made under section 302(b) with respect to a petition, the Special Representative,[84] on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreements, the Special Representative[84] shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Special Representative[84] shall seek information and advice from the petitioner and the appropriate private sector representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

Sec. 304.[83] Recommendations by the Special Representative.[84]

(a) RECOMMENDATIONS.—

(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Special Representative[84] shall recommend to the President what action, if any, he should take under section 301 with respect to the issues raised in the petition. The Special Representative[84] shall make that recommendation not later than—

(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section of the "Subsidies Agreement");

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

(2) SPECIAL RULE.—In the case of any petition—

(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Special Representative[84] shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Special Representative,[84] within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) CONSULTATION BEFORE RECOMMENDATION.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Special Representative,[84] unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate private sector advisory representatives provided for under section 135; and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Special Representative[84] does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

Sec. 305.[83] Requests for Information.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Special Representative[84] shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular merchandise, to the extent that such information is available to the Special Representative[84] or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by an interested party under subsection (a) is not available to the Special Representative[84] or other Federal agencies, the Special Representative[84] shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

Sec. 306.[83] Administration.

The Special Representative[84] shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this chapter;

(2) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

(3) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 302, developments in and current status of each such proceeding, and the actions taken, or the reasons for no action, by the President under section 301.

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TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT [87]

Sec. 401. Exception of the Products of Certain Countries or Areas.

Except as otherwise provided in this title, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

Sec. 402. Freedom of Emigration in East-West Trade.

(a) To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such

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[87] See also sec. 604 of the Agricultural Trade Act of 1978 (Public Law 95-501; 92 Stat. 1692) which called on the Secretary of Agriculture to submit a report to Congress on the effect of this title on American agriculture together with recommendations for amending or repealing specific sections of title IV. See page 513, vol. I for complete text.

treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d)(1) If the President determines that the extension of the waiver authority granted by subsection (c)(1) will substantially promote the objectives of this section, he may recommend to the Congress that such authority be extended for a period of 12 months. Any such recommendation shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c)(1) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

(2) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), such authority shall continue in effect with respect to any country for a period of 12 months following the end of the 18-month period, referred to in subsection (c)(1), if, before the end of such 18-month period, the House of Representatives and the Senate adopt, by an affirmative vote of a majority of the Members present and voting in each House and under the procedures set forth in section 153, a concurrent resolution approving the extension of such authority, and such resolution does not name such country as being excluded from such authority. Such authority shall cease to be effective with respect to any country named in such concurrent resolution on the

date of the adoption of such concurrent resolution. If before the end of such 18-month period, a concurrent resolution approving the extension of such authority is not adopted by the House and the Senate, but both the House and Senate vote on the question of final passage of such a concurrent resolution and—

(A) both the House and the Senate fail to pass such a concurrent resolution, the authority granted by subsection (c)(1) shall cease to be effective with respect to all countries at the end of such 18-month period;

(B) both the House and the Senate pass such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 18-month period; or

(C) one House fails to pass such a concurrent resolution and the other House passes such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 18-month period.

(3) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), and at the end of the 18-month period referred to in subsection (c)(1) the House of Representatives and the Senate have not adopted a concurrent resolution approving the extension of such authority and subparagraph (A) of paragraph (2) does not apply, such authority shall continue in effect for a period of 60 days following the end of such 18-month period with respect to any country (except for any country with respect to which such authority was not extended by reason of the application of subparagraph (B) or (C) of paragraph (2), and shall continue in effect for a period of 12 months following the end of such 18-month period with respect to any such country if, before the end of such 60-day period, the House of Representatives and the Senate adopt, by an affirmative vote of a majority of the Members present and voting in each House and under the procedures set forth in section 153, a concurrent resolution approving the extension of such authority, and such resolution does not name such country as being excluded from such authority. Such authority shall cease to be effective with respect to any country named in such concurrent resolution on the date of the adoption of such concurrent resolution. If before the end of such 60-day period, a concurrent resolution approving the extension of such authority is not adopted by the House and the Senate, but both the House and Senate vote on the question of final passage of such a concurrent resolution and—

(A) both the House and the Senate fail to pass such a concurrent resolution, the authority granted by subsection (c)(1) shall cease to be effective with respect to all countries on the date of the vote on the question of final passage by the House which votes last;

(B) both the House and the Senate pass such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 60-day period; or

(C) one House fails to pass such a concurrent resolution and the other House passes such a concurrent resolution which

names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 60-day period.

(4) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), and at the end of the 60-day period referred to in paragraph (3) the House of Representatives and the Senate have not adopted a concurrent resolution approving the extension of such authority and subparagraph (A) of paragraph (3) does not apply, such authority shall continue in effect until the end of the 12-month period following the end of the 18-month period referred to in subsection (c)(1) with respect to any country (except for any country with respect to which such authority was not extended by reason of the application of subparagraph (B) or (C) of paragraph (2) or subparagraph (B) or (C) of paragraph (3)), unless before the end of the 45-day period following such 60-day period either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the procedures set forth in section 153, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 45-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 45-day period of a resolution disapproving the extension of such authority with respect to such country.

(5) If the waiver authority granted by subsection (c) has been extended under paragraph (3) or (4) for any country for the 12-month period referred to in such paragraphs, and the President determines that the further extension of such authority will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless before the end of the 60-day period following such previous 12-month extension, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the procedures set forth in section 153, a resolution disapproving the extension of such

authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 90-day period of a resolution disapproving the extension of such authority with respect to such country.

(e) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

Sec. 403. United States Personnel Missing in Action in Southeast Asia.

(a) Notwithstanding any other provision of law, if the President determines that a nonmarket economy country is not cooperating with the United States—

(1) to achieve a complete accounting of all United States military and civilian personnel who are missing in action in Southeast Asia,

(2) to repatriate such personnel who are alive, and

(3) to return the remains of such personnel who are dead to the United States,

then, during the period beginning with the date of such determination and ending on the date on which the President determines such country is cooperating with the United States, he may provide that—

(A) the products of such country may not receive nondiscriminatory treatment,

(B) such country may not participate, directly or indirectly, in any program under which the United States extends credit, credit guarantees, or investment guarantees, and

(C) no commercial agreement entered into under this title between such country and the United States will take effect.

(b) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

Sec. 404. Extension of Nondiscriminatory Treatment.

(a) Subject to the provisions of section 405(c), the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405.

(b) The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this title which has entered into an agreement with the United States regarding the settlement of lend-lease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to periods

during which such country is not in arrears on its obligations under such agreement.

(c) The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Tariff Schedules for the United States.

Sec. 405. Authority to Enter Into Commercial Agreements.

(a) Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

(b) Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property,[88] provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

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[88] 21 UST 1583.

(8) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the promotion of trade, which may include arrangements[89] for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purposes of this Act.

(c) An agreement referred to in subsection (a), and a proclamation referred to in section 404(a) implementing such agreement, shall take effect only if (1) approved by the Congress by the adoption of a concurrent resolution referred to in section 151, or (2) in the case of an agreement entered into before the date of the enactment of this Act and a proclamation implementing such agreement, a resolution of disapproval referred to in section 152 is not adopted during the 90-day period specified by section 407(c)(2).

Sec. 406. Market Disruption.

(a)(1) Upon the filing of a petition by an entity described in section 201(a)(1), upon request of the President or the Special Representative for Trade Negotiations,[90] upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(2), (b)(3), and (c) of section 201 shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

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[89] The word "arrangement" was substituted in lieu of the word "those" by sec. 1106(f)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 312).

[90] This position was redesignated as the United States Trade Representative pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) For purposes of sections 202 and 203, an affirmative determination of the Commission under subsection (a) shall be treated as an affirmative determination under section 201(b), except that—

(1) the President make take action under sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the President by an entity described in section 201(a)(1) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section—

(1) The term "Communist country" means any country dominated or controlled by communism.

(2) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are in-

creasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

Sec. 407. Procedure for Congressional Approval or Disapproval of Extension of Nondiscriminatory Treatment and Presidential Reports.

(a) Whenever the President issues a proclamation under section 404 extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) or 409(b) with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) or 409(b) as the case may be, to be submitted on or before such December 31.

(c)(1) In the case of a document referred to in subsection (a) (other than a document to which paragraph (2) applies), the proclamation set forth therein may become effective and the agreement set forth therein may enter into force and effect only if the House of Representatives and the Senate adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of approval (under the procedures set forth in section 151) of the extension of nondiscriminatory treatment to the products of the country concerned.

(2) In the case of a document referred to in subsection (a) which sets forth an agreement entered into before the date of the enactment of this Act and a proclamation implementing such agreement, such proclamation may become effective and such agreement may enter into force and effect after the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, unless during such 90-day period either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152) of the extension of nondiscriminatory treatment to the products of the country concerned.

(3) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152) of the report submitted by the President with respect to such country, then beginning with the day after the date of the adoption of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products

of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Tariff Schedules of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title.

Sec. 408. Payment by Czechoslovakia of Amounts Owed United States Citizens and Nationals.

(a) The arrangement initiated on July 5, 1974 with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslovakia.

(b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.

Sec. 409. Freedom to Emigrate to Join a Very Close Relative in the United States.

(a) To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after the date of the enactment of this Act, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United States, such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons

wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

(d) During any period that a waiver is in effect with respect to any nonmarket economy country under section 402(c), the provisions of subsections (a) and (b) shall not apply with respect to such country.

Sec. 410. East-West Trade Statistics Monitoring System.

The International Trade Commission shall establish and maintain a program to monitor imports of articles into the United States from nonmarket economy countries and exports of articles from the United States to nonmarket economy countries. To the extent feasible, the Commission shall coordinate such program with any relevant date gathering programs presently conducted by the Secretary of Commerce. The Secretary of Commerce shall provide the Commission with any information which, in the determination of the Commission, is necessary to carry out this section. The Commission shall publish a detailed summary of the data collected under the East-West Trade Statistics Monitoring System not less frequently than once each calendar quarter and shall transmit such publication to the East-West Foreign Trade Board and to Congress. Such publication shall include data on the effect of such imports, if any, on the production of like, or directly competitive, articles in the United States and on employment within the industry which produces like, or directly competitive, articles in the United States.

Sec. 411. East-West Foreign Trade Board.[91]

(a) The President shall establish an East-West Foreign Trade Board (hereinafter referred to as the "Board") to monitor trade between persons and agencies of the United States Government and nonmarket economy countries or instrumentalities of such countries to insure that such trade will be in the national interest of the United States.

(b)(1) Any person who exports technology vital to the national interest of the United States to a nonmarket economy country or an instrumentality of such country, and any agency of the United States which provides credits, guarantees or insurance to such country or such instrumentality in an amount in excess of $5,000,000 during any calendar year, shall file a report with the

[91] Pursuant to sec. 6 of Reorganization Plan No. 3 of 1979 (Reorganization of Functions Relating to International Trade), the East-West Foreign Trade Board was abolished, effective Jan. 2, 1980. Such Reorganization Plan No. 3 of 1979 also transferred the functions of the Board under sec. 411 (a) and (b) to the interagency organization established under sec. 242 of the Trade Expansion Act of 1962. The functions of the Board under sec. 411(c) were transferred to the President.

Board in such form and manner as the Board requires which describes the nature and terms of such export or such provision.

(2) For purposes of paragraph (1), if the total amount of credits, guarantees and insurance which an agency of the United States provides to all nonmarket economy countries and the instrumentalities of such countries exceeds $5,000,000 during a calendar year, then all subsequent provisions of credits, guarantees or insurance in any amount, during such year shall be reported to the Board under the provisions of paragraph (1).

(c) The Board shall submit to Congress a quarterly report on trade between the United States and nonmarket economy countries and instrumentalities of such countries. Such report shall include a review of the status of negotiations of bilateral trade agreements between the United States and such countries under this title, the activities of joint trade commissions created pursuant to such agreements, the resolution of commercial disputes between the United States and such countries any exports from such countries which have caused disruption of United States markets, and recommendations for the promotion of east-west trade in the national interest of the United States.

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

Sec. 501. Authority to Extend Preferences.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries; and

(3) the anticipated impact of such action on United States producers of like or directly competitive products.

Sec. 502. Beneficiary Developing Country.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order for that purpose or by issuing an Executive order which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate

such designation, together with the consideration entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties,[92] the President may by Executive order provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(b) No designation shall be made under this section with respect to any of the following:

Australia	Japan
Austria	Monaco
Canada	New Zealand
Czechoslovakia	Norway
European Economic Community member states	Poland
Finland	Republic of South Africa
Germany (East)	Sweden
Hungary	Switzerland
Iceland	Union of Soviet Socialist Republics

In addition, the President shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect to which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level which causes serious disruptions of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurance satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

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[92] The words to this point beginning with "or which is contributing to" were added by sec. 1111(a)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 315).

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens.

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless—

(D) the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) produced, processed, or transported in such country from entering the United States unlawfully;

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute; and

(7)[93] if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

Paragraphs (4), (5), (6), and (7) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country; and

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country.

(d) General headnote 3(a) to the Tariff Schedules of the United States (19 U.S.C. 1202) (relating to products of insular possessions) is amended by adding at the end thereof the following new paragraph:

"(iii) Subject to the limitations imposed under sections 503(b) and 504(c) of the Trade Act of 1974, articles designated eligible articles under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such articles imported from a beneficiary developing country under title V of such Act."

(e)(1)[94] The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2)[87] The President may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or ter-

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[93] Par. (7) was added by sec. 1802 of Public Law 94-455 (90 Stat. 1763).

[94] The paragraph designation "(1)" and a new par. (2) were added by sec. 1111(a)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 315).

minates the delivery of supplies of petroleum and petroleum products to the United States.

Sec. 503. Eligible Articles.

(a) The President shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. Before any such list is furnished to the Commission, there shall be in effect an Executive order under section 502 designating beneficiary developing countries. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the President shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order.

(b) The duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2)[95] If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection.

(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

(B) watches,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear articles specified in items 700.05 through 700.27, 700.29 through 700.53, 700.55.23 through 700.55.75, and 700.60 through 700.80 of the Tafiff Schedules of the United States,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

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[95] Sec. 1111(a)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 315) amended and restated par. (2) and struck out the penultimate sentence of subsec. (b). For the most part, this sentence can now be found at sec. 504(c)(3).

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

Sec. 504. Limitations on Preferential Treatment.

(a) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any other action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(b) The President shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order revoking his designation of such country under section 502.

(c)(1) Whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1974, or

(B) except as provided in subsection (d), has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year,

then, not later than 90 days[96] after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such 90th day,[96] the President determines and publishes in the Federal Register that, with respect to such country—

(i) there has been an historical preferential trade relationship between the United States and such country,

(ii) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(iii) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article.

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[96] The 90-day time period was extended from a 60-day period by sec. 1106(g)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 313).

(2) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated, subject to the provisions of section 502, a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in paragraph (1) of this subsection during the preceding calendar year.

(3)[97] For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d) Subsection (c)(1)(B) does not apply with respect to any eligible article if a like or directly competitive article is not produced on the date of enactment of this Act in the United States. The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $1,000,000 as the gross national product of the United States for that calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1979.[98]

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

Sec. 505. Time Limit on Title; Comprehensive Review.

(a) No duty-free treatment under this title shall remain in effect after the date which is 10 years after the date of the enactment of this Act.

(b) On or before the date which is 5 years after the date of the enactment of this Act, the President shall submit to the Congress a full and complete report of the operation of this title.

TITLE VI—GENERAL PROVISIONS

Sec. 601. Definitions.

For purposes of this Act—

(1) The term "duty" includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term "other import restriction" includes a limitation, prohibition, charge, or[99] exaction other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term "ad valorem" includes ad valorem equivalent. Whenever any limitation on the amount by which or to which

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[97] Par. (3) was added by sec. 1111(a)(4) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 313). However, sec. 1111(b) of the same Act provided that this amendment would not become effective until Apr. 1, 1980.

[98] This sentence was added by sec. 1111(a)(4) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 313). However, sec. 1111(b) of the same act provided that this amendment would not become effective until Apr. 1, 1980.

[99] The word "or" was substituted in lieu of "and" by sec. 1106(h)(7) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 313).

any rate of duty may be decreased or increased pursuant to a trade agreement is expressed in terms of an ad valorem percentage, the ad valorem amount taken into account for purposes of such limitation shall be determined by the President on the basis of the value of imports of the articles concerned during the most recent representative period.

(4) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 402 or 402a of the Tariff Act of 1930 (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 402 of such Act of 1930 (as in effect on the effective date of such title II amendments) whichever is[100] applicable to the article concerned during such representative period.

(5) An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

(6) The term "modification", as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction.

(7) The term "existing" means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty, the nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of schedules 1 through 7 of the Tariff Schedules of the United States on the date specified or (if no date is specified) on the day referred to in clause (A).

(8) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

(9) The term "nondiscriminatory treatment" means most-favored-nation treatment.

(10) The term "commerce" includes services associated with international trade.

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[100] The words to this point beginning with "(as in effect before the effective date" were added by sec. 202(c)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 202). A reference to 19 U.S.C. 1401a or 1402, which had appeared at this point, was also struck out by sec. 202(c)(1).

Sec. 602. Relation to Other Laws. [Subsections (a) through (e) amend the Tariff Act of 1930 and the Trade Expansion Act of 1962.]

* * * * * * *

(f) All provisions of law (other than this Act, the Trade Expansion Act of 1962, and the Trade Agreements Extension Act of 1951) in effect after the date of enactment of this Act, referring to section 350 of the Tariff Act of 1930, to that section as amended, to the Act entitled "An Act to amend the Tariff Act of 1930," approved June 12, 1934, to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations or orders issued pursuant to this Act.

Sec. 603. International Trade Commission.

(a) In order to expedite the performance of its functions under this Act, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) In performing its functions under this Act, the Commission may exercise any authority granted to it under any other Act.

(c) The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

Sec. 604. Consequential Changes in the Tariff Schedules.

The President shall from time to time, as appropriate, embody in the Tariff Schedules of the United States the substance of the relevant provisions of this Act, and of other Acts affecting import treatment, and actions thereunder, including modification, continuance, or imposition of any rate of duty or other import restriction.

Sec. 605. Separability.

If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.

Sec. 606. International Drug Control.

The President shall submit a report to Congress at least once each calendar year listing those foreign countries in which narcotic drugs and other controlled substances (as listed under section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) are produced, processed, or transported for unlawful entry into the United States. Such report shall include a description of the measures such countries are taking to prevent such production, processing, or transport.

Sec. 607. Voluntary Limitations on Exports of Steel to the United States.

No person shall be liable for damages, penalties, or other sanctions under the Federal Trade Commission Act (15 U.S.C. 41–77) or the Antitrust Acts (as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 44)), or under any similar State law, on account of his negotiating, entering into, participating in, or implementing an arrangement providing for the voluntary limitation on exports of steel and steel products to the United States, or any modification or renewal of such an arrangement, if such arrangement or such modification or renewal—

(1) was undertaken prior to the date of the enactment of this Act at the request of the Secretary of State or his delegate, and

(2) ceases to be effective not later than January 1, 1975.

Sec. 608. Uniform Statistical Data on Imports, Exports, and Production.

(a) Section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) is amended to read as follows:

"(e) STATISTICAL ENUMERATION.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article."

(b) In carrying out the responsibilities under section 484(e), Tariff Act of 1930 and other pertinent statutes, the Secretary of Commerce and the United States International Trade Commission shall conduct jointly a study of existing commodity classification systems with a view to identifying the appropriate principles and concepts which should guide the organization and development of an enumeration of articles which would result in comparability of United States import, production, and export data. The Secretary and the United States International Trade Commission shall submit a report to both Houses of Congress and to the President with respect to such study no later than August 1, 1975.

(c) In further connection with its responsibilities pursuant to subsections (a) and (b), the United States International Trade Commission shall undertake an investigation under section 332(g) of the Tariff Act of 1930[101] which would provide the basis for—

(1) a report on the appropriate concepts and principles which should underlie the formulation of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in

[101] 19 U.S.C. 1332. For text, see page 133.

national and international trade, taking into account how such a code could meet the needs of sound customs and trade reporting practices reflecting the interests of United States and other countries, such report to be submitted to both Houses of Congress and to the President as soon as feasible, but in any event, no later than June 1, 1975; and

(2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices,

and, in carrying out such responsibilities, the Commission shall report to both Houses of Congress and to the President, as it deems appropriate.

(d) the President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the United States International Trade Commission in carrying out their responsibilities under subsections (a), (b), and (c).

(e) The amendment made by subsection (a) insofar as it relates to export declarations shall take effect on January 1, 1976.

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Sec. 612. Trade Relations with North American Countries.[102]

(a)[103] It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b)[103] The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after the date of enactment of this Act. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.

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[102] The reference to North American Countries in the section heading replaced a reference to Canada, pursuant to sec. 1104(b) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 310).

[103] Sec. 1104(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 310) added the subsection designation "(a)" and added a new subsec. (b).

Sec. 613. Limitation on Credit to Russia.

After the date of enactment of the Trade Act of 1974, no agency of the Government of the United States, other than the Commodity Credit Corporation, shall approve any loans, guarantees, insurance, or any combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000 without prior congressional approval as provided by law.

b. Trade Agreements Act of 1979

Partial text of Public Law 96-39 [H.R. 4537], 93 Stat. 144 approved July 26, 1979

AN ACT To approve and implement the trade agreements negotiated under the Trade Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title; Table of Contents; Purposes.

(a) SHORT TITLE.—This Act may be cited as the "Trade Agreements Act of 1979".

(b) TABLE OF CONTENTS.—* * *

(c) [1] PURPOSES.—The purposes of this Act are—

(1) to approve and implement the trade agreements negotiated under the Trade Act of 1974;

(2) to foster the growth and maintenance of an open world trading system;

(3) to expand opportunities for the commerce of the United States in international trade; and

(4) to improve the rules of international trade and to provide for the enforcement of such rules, and for other purposes.

Sec. 2.[2] Approval of Trade Agreements.

(a) APPROVAL OF AGREEMENTS AND STATEMENTS OF ADMINISTRATIVE ACTION.—In accordance with the provisions of sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves the trade agreements described in subsection (c) submitted to the Congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

(b) ACCEPTANCE OF AGREEMENTS BY THE PRESIDENT.—

(1) IN GENERAL.—The President may accept for the United States the final legal instruments or texts embodying each of the trade agreements approved by the Congress under subsection (a). The President shall submit a copy of each final instrument or text to the Congress on the date such text or instrument is available, together with a notification of any changes in the instruments or texts, including their annexes, if any, as accepted and the texts of such agreements as submitted to the Congress under subsection (a). Such final legal instruments or texts shall be deemed to be the agreements submitted to and approved by the Congress under subsection (a) if such changes are—

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[1] 19 U.S.C. 2502.
[2] 19 U.S.C. 2503.

(A) only rectifications of a formal character or minor technical or clerical changes which do not affect the substance or meaning of the texts as submitted to the Congress on June 19, 1979, or

(B) changes in annexes to such agreements, and the President determines that the balance of United States rights and obligations under such agreements is maintained.

(2) APPLICATION OF AGREEMENT BETWEEN THE UNITED STATES AND OTHER COUNTRIES.—No agreement accepted by the President under paragraph (1) shall apply between the United States and any other country unless the President determines that such country—

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 126(c) of the Trade Act of 1974 (19 U.S.C. 2136(c)), to the United States.

(3) LIMITATION ON ACCEPTANCE CONCERNING MAJOR INDUSTRIAL COUNTRIES.—The President may not accept an agreement described in paragraph (1), (2), (3), (4), (5), (6), (7), (9), (10), or (11) of subsection (c), unless he determines that each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting the agreement. Notwithstanding the preceding sentence, the President may accept such an agreement, if he determines that only one major industrial country is not accepting that agreement and the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if—

(A) that country is not a major factor in trade in the products covered by that agreement,

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country, or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

For purposes of this paragraph, the acceptance of an agreement by the European Communities on behalf of its member countries shall also be treated as acceptance of that agreement by each member country, and acceptance of an agreement by all the member countries of the European Communities shall also be treated as acceptance of that agreement by the European Communities.

(c) TRADE AGREEMENTS TO WHICH THIS ACT APPLIES.—The trade agreements to which subsection (a) applies are the following:

(1) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation).

(2) The Agreement on Government Procurement.

(3) The Agreement on Import Licensing Procedures.

(4) The Agreement on Technical Barriers to Trade (relating to product standards).

(5) The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

(6) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(7) The International Dairy Arrangement.

(8) Certain bilateral agreements on cheese, other dairy products, and meat.

(9) The Arrangement Regarding Bovine Meat.

(10) The Agreement on Trade in Civil Aircraft.

(11) Texts Concerning a Framework for the Conduct of World Trade.

(12) Certain Bilateral Agreements to Eliminate the Wine-Gallon Method of Tax and Duty Assessment.

(13) Certain other agreements to be reflected in Schedule XX of the United States to the General Agreement on Tariffs and Trade, including Agreements—

(A) to Modify United States Watch Marking Requirements, and to Modify United States Tariff Nomenclature and Rates of Duty for Watches,

(B) to Provide Duty-Free Treatment for Agricultural and Horticultural Machinery, Equipment, Implements, and Parts Thereof, and

(C) to Modify United States Tariff Nomenclature and Rates of Duty for Ceramic Tableware.

(14) The Agreement with the Hungarian People's Republic.

Sec. 3.[3] Relationship of Trade Agreements to United States Law.

(a) UNITED STATES STATUTES TO PREVAIL IN CONFLICT.—No provision of any trade agreement approved by the Congress under section 2(a), nor the application of any such provision to any person or circumstances, which is in conflict with any statute of the United States shall be given effect under the laws of the United States.

(b) IMPLEMENTING REGULATIONS.—Regulations necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 to implement each agreement approved under section 2(a) shall be issued within 1 year after the date of the entry into force of such agreement with respect to the United States.

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) PRESIDENTIAL DETERMINATION.—Whenever the President determines that it is necessary or appropriate to amend,

[3] 19 U.S.C. 2504.

repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation. Not less than 30 days before submitting such a bill, the President shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and each committee of the House or Senate which has jurisdiction over legislation involving subject matters which would be affected by such amendment, repeal, or enactment. The consultation shall treat all matters relating to the implementation of such requirement, amendment, or recommendation, as provided in paragraphs (2) and (3).

(2) CONDITIONS FOR TAKING EFFECT UNDER UNITED STATES LAW.—No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representatives and the Senate of his determination and publishes notice of that determination in the Federal Register.

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) RECOMMENDATIONS AS TO APPLICATION.—The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 102(f) of the Trade Act of 1974, with respect to a trade agreement.

(4) CONGRESSIONAL PROCEDURES APPLICABLE.—The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 151 of the Trade Act of 1974, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purposes of applying section 151 of such Act to such bill—

(A) the term "trade agreement" shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term "implementing bill" or "implementing revenue bill", whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

(e) CONGRESSIONAL LIAISON.—Paragraph (1) of section 161(b) of the Trade Act of 1974 (19 U.S.C. 2211(b)) is amended by inserting "or any requirement of, amendment to, or recommendation under, such agreement" immediately after "trade agreement".

(f) UNSPECIFIED PRIVATE REMEDIES NOT CREATED.—Neither the entry into force with respect to the United States of any agreement approved under section 2(a), nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTIES [4]

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Sec. 102. Pending Investigations.

(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, there is an investigation in progress under section 303 of that Act as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 and the matter previously under investigation shall be subject to this title as if the affirmative determination called for in section 702 of that Act were made with respect to that matter on the effective date of the application of title VII of that Act to such country.

(2) If the Secretary has made a preliminary determination under such section 303, but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 and the matter previously under investigation shall be subject to the provisions of title VII of that Act as if the preliminary determination under section 303 were a preliminary determination under section 703 of that title made on the effective date of the application of that title to such country.

(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930, there is an investigation in progress under the Antidumping Act, 1921, as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921, as to the question of

[4] Sec. 101 of title I added a new title VII to the Tariff Act of 1930. See page 153 for text of this new title concerning countervailing and antidumping duties.

less-than-fair-value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921, and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the affirmative determination called for in section 732 were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

(2) If the Secretary has made under the Antidumping Act, 1921, a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the preliminary determination under the Antidumping Act, 1921, were a preliminary determination under section 733 of that title made on the effective date of title VII of the Tariff Act of 1930.

(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930, which shall be completed within 75 days, and—

(1) treat any final determination of the Secretary of the Treasury under section 303 as a final determination under section 705(a) of the Tariff Act of 1930 and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under subtitle A of that title; and

(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act of 1921, as a final determination under section 735(a) of the Tariff Act of 1930.

Sec. 103.[5] * * *

Sec. 104. Transition Rules for Countervailing Duty Orders.

(a) WAIVED COUNTERVAILING DUTY ORDERS.—

(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

[5] Sec. 103 consists of amendments to sec. 303 of the Tariff Act of 1930. See page 124 for text of sec. 303.

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(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act), which is a product of a country under the Agreement.

(B) published on or after the date of the enactment of this Act, and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930), or

(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76-109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise subject to the order.

(3) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act.

(B) NEGATIVE DETERMINATION.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

(b) OTHER COUNTERVAILING DUTY ORDERS.—

(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked.

(3) SUSPENSION OF LIQUIDATION; INVESTIGATION TIME LIMITS.—Whenever the Commission receives a request under paragraph (1) it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

(4) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930.

(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

(c) ALL OUTSTANDING COUNTERVAILING DUTY ORDERS.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 which is—

(1) in effect on the effective date of title VII of the Tariff Act of 1930 (as added by section 101 of this Act), or

(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930,

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 is used in this section, it has the same meaning as when it is used in title VII of that Act.

Sec. 105.[6] * * *

Sec. 106. Conforming Changes.

(a) REPEAL OF OLD LAW.—The Antidumping Act, 1921 (19 U.S.C. 160 et seq.) is hereby repealed but findings in effect on the effective date of this Act, or issued pursuant to court order in an action brought before that date, shall remain in effect, subject to review under section 751 of the Tariff Act of 1920.

(b)[7] * * *

Sec. 107. Effective Date.

Except as otherwise provided in this title, this title and the amendments made by it shall take effect on January 1, 1980, if—

(1) the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), and

(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures),

approved by the Congress under section 2(a) of this Act have entered into force with respect to the United States as of that date.[8]

TITLE II—CUSTOMS VALUATION

SUBTITLE A—VALUATION STANDARDS AMENDMENTS

Sec. 201.[9] * * *

Sec. 202.[9] * * *

Sec. 203. Presidential Report on Operation of the Agreement.

As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect, the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) (hereinafter in this subtitle referred to as the "Agreement"), both domestically and internationally, during that period.

Sec. 204. Transition to Valuation Standards Under this Title.

(a) EFFECTIVE DATE OF AMENDMENTS.—

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[6] Sec. 105 consists of amendments to sec. 304(d)(4) of the Tariff Act of 1930 concerning the continuation of certain waivers.

[7] Subsec. (b) consists of conforming amendments to several statutes.

[8] The President in his determination of Dec. 14, 1979 (44 F.R. 74781), authorized the U.S. Special Representative for Trade Negotiations to sign both of these agreements.

[9] Sec. 201 amended sec. 402 of the Tariff Act of 1930 to reflect changes brought about by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation) while sec. 202 consists of conforming amendments to several other laws.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title (except the amendments made by section 223(b)) shall take effect on—

(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force;

and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

(2) EARLIER EFFECTIVE DATE UNDER CERTAIN CIRCUMSTANCES.—If the President determines before January 1, 1981, that—

(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

(B) each of the member states of the European Economic Community has implemented the Agreement under its laws;

the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b)) shall take effect on the date specified in the proclamation (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States on or after such date; except that unless the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revised (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

(i) shall remain in effect until the date on which the Agreement enters into force with respect to the United States (and on such date the amendments made by this title (except the amendments made by section 223(b)) are revived and shall apply with respect to merchandise exported to the United States on or after such date); and

(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

(b) APPLICATION OF OLD LAW VALUATION STANDARDS.—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

(c) SPECIAL TREATMENT FOR CERTAIN RUBBER FOOTWEAR.—The amendments made by section 223(b) shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

(d) DEFINITION.—For purposes of this section, the term "rubber footwear" means articles described in item 700.60 of the Tariff Schedules of the United States (as in effect on the day before the day on which the amendments made by section 223(b) take effect).

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TITLE III—GOVERNMENT PROCUREMENT [10]

Sec. 301. General Authority to Modify Discriminatory Purchasing Requirements.

(a) PRESIDENTIAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.—The President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) DESIGNATION OF ELIGIBLE COUNTRIES AND INSTRUMENTALITIES.—The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) MODIFICATION OR WITHDRAWAL OF WAIVERS AND DESIGNATIONS.—The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).

Sec. 302. Authority to Encourage Reciprocal Competitive Procurement Practices.

(a) AUTHORITY TO BAR PROCUREMENT FROM NON-DESIGNATED COUNTRIES.—With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate recip-

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[10] 19 U.S.C. 2511-2518.

rocal competitive government procurement opportunities to United States products and suppliers of such products—

(1) shall prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which would otherwise be eligible products; and

(2) may take such other actions within his authority as he deems necessary.

(b) DEFERRALS AND WAIVERS.—Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1), of products of a foreign country or instrumentality which is not designated pursuant to section 301(b), except that no such delay shall be granted with respect to the procurement of products of any major industrial country;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

(c) REPORT ON IMPACT OF RESTRICTIONS.—

(1) IMPACT ON THE ECONOMY.—On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) RECOMMENDATIONS FOR ATTAINING RECIPROCITY.—The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report shall include an analysis of the effect of such alternative means on

the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 304 (a) and (b), other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) CONSULTATION.—In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 135 of the Trade Act of 1974.

(d) PROPOSED ACTION.—

(1) PRESIDENTIAL REPORT.—On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) PROCEDURE.—

(A) PRESIDENTIAL DETERMINATION.—If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) CONGRESSIONAL CONSIDERATION.—The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

Sec. 303. Waiver of Discriminatory Purchasing Requirements With Respect to Purchases of Civil Aircraft.

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft. The President may modify or withdraw any waiver granted pursuant to this section.

Sec. 304. Expansion of the Coverage of the Agreement.

(a) OVERALL NEGOTIATING OBJECTIVE.—The President shall seek in the renegotiations provided for in part IX, paragraph 6, of the

Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 306(a).

(b) SECTOR NEGOTIATING OBJECTIVES.—The President shall seek, consistent with the overall objective set forth in subsection (a) and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) INDEPENDENT VERIFICATION OBJECTIVE.—The President shall seek to establish in the renegotiation provided for in part IX, paragraph 6, of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to part VI, paragraph 9, of the Agreement.

(d) REPORTS OF NEGOTIATIONS.—

(1) REPORT IN THE EVENT OF INADEQUATE PROGRESS.—If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 302(c)(1). Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 302(c), the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of Government procurement.

(2) LEGISLATIVE RECOMMENDATIONS.—Taking into account the factors required to be analyzed under section 302(c), the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) ANNUAL REPORTS.—Each annual report of the President under section 163(a) of the Trade Act of 1974 made after the date of enactment of this Act shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) EXTENSION OF NONDISCRIMINATION AND NATIONAL TREATMENT.—Before exercising the waiver authority in section 301 for

procurement not covered by the Agreement on the date of enactment of this Act, the President shall follow the consultation provisions of section 135 and chapter 6 of title I of the Trade Act of 1974 for private sector and congressional consultations.

Sec. 305. Monitoring and Enforcement.

(a) MONITORING AND ENFORCEMENT STRUCTURE RECOMMENDATIONS.—In the preparation of the recommendations for the reorganization of trade functions, the President shall insure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this title, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 301(b).

(b) RULES OF ORIGIN.—

(1) ADVISORY RULINGS AND FINAL DETERMINATIONS.—For the purposes of this title, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 308(4)(B), an article is or would be a product of a foreign country or instrumentality designated pursuant to section 301(b).[11]

(2) PENALTIES FOR FRAUDULENT CONDUCT.—In addition to any other provisions of law which may be applicable, section 1001 of title 18, United States Code, shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 301 or avoiding a prohibition under section 302.

(c) REPORT TO CONGRESS ON RULES OF ORIGIN.—

(1) DOMESTIC ADMINISTRATIVE PRACTICES.—As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 301(a) first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) FOREIGN ADMINISTRATIVE PRACTICES.—The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

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[11] This responsibility of the Secretary of the Treasury was transferred to the Secretary of Commerce, pursuant to sec. 5(a)(1) of Reorganization Plan No. 3 of 1979 (International Trade). However, the Secretary of Commerce shall consult the Secretary of the Treasury in exercising this function.

Sec. 306. Labor Surplus Area Studies.

(a) EFFECT ON THE ECONOMY.—Prior to the renegotiations provided for in part IX, paragraph 6, of the Agreement, the President shall prepare and transmit to the Congress a report, which assesses the economic impact, including the impact on employment in various regions of the United States, of the waiver of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, in the procurement of products produced in labor surplus areas and of the waiver of procurement set-asides for labor surplus areas.

(b) EFFECT ON TARGETS.—On or before July 1, 1981, the President shall prepare and transmit to the Congress a report which assesses the effect of the waiver of the provisions of such title III in the procurement of products produced in labor surplus areas and the waiver of procurement set-asides for labor surplus areas on the fulfillment of the objectives of Executive Order 12073, issued August 16, 1978, relating to the encouragement of procurement in labor surplus areas, including an assessment of such waiver on the procurement targets set by the Administrator of the General Services Administration pursuant to such Executive order. On or before January 1, 1980, the President shall begin consultation with and provide interim reports to the congressional committees referred to in section 302(c)(1) concerning the report required by the preceding sentence.

Sec. 307. Availability of Information to Congressional Advisers.

The Special Representative for Trade Negotiations shall make available to the Members of Congress designated as official advisers pursuant to section 161 of the Trade Act of 1974 information compiled by the Committee on Government Procurement under part VI, paragraph 9, of the Agreement.

Sec. 308. Definitions.

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the Agreement on Government Procurement referred to in section 2(c) of this Act, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) CIVIL AIRCRAFT.—The term "civil aircraft and related articles" means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without

regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) DEVELOPED COUNTRIES.—The term "developed countries" means countries so designated by the President.

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(5) INSTRUMENTALITY.—The term "instrumentality" shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) LEAST DEVELOPED COUNTRY.—The term "least developed country" means any country on the United Nations General Assembly list of least developed countries.

(7) MAJOR INDUSTRIAL COUNTRY.—The term "major industrial country" means any such country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.[12]

Sec. 309. Effective Dates.

The provisions of this title shall be effective on the date of enactment of this Act, except that—

(1) the authority of the President to grant waivers under section 303 shall be effective on January 1, 1980; and

(2) the authority of the President to grant waivers under section 301 shall be effective on January 1, 1981.

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)[13]

SUBTITLE A—OBLIGATIONS OF THE UNITED STATES

Sec. 401. Certain Standards-Related Activities.

Nothing in this title may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency

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[12] Such definition in sec. 126 of the Trade Act of 1974 includes "Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President". See page 16 for complete text.

[13] 19 U.S.C. 2531-2573.

shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

Sec. 402. Federal Standards-Related Activities.

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) NONDISCRIMINATORY TREATMENT.—Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) USE OF INTERNATIONAL STANDARDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) APPLICATION OF REQUIREMENT.—For purposes of this paragraph, the following apply:

(i) INTERNATIONAL STANDARDS NOT APPROPRIATE.—The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) REGIONAL STANDARDS.—In developing standards, a Federal agency may, but is not required to take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 451(6)(A)(ii).

(3) PERFORMANCE CRITERIA.—Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) CERTIFICATION ACCESS FOR FOREIGN SUPPLIERS.—Each Federal agency shall, with respect to any certification system used by it, permit access for obtaining certification under that system to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products whether of domestic or other foreign origin.

Sec. 403. State and Private Standards-Related Activities.

(a) IN GENERAL.—It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) PRESIDENTIAL ACTION.—The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 402, and of procedures that provide for notification, participation, and publication with respect to such activities.

SUBTITLE B—FUNCTIONS OF FEDERAL AGENCIES

Sec. 411. Functions of Special Representative.

(a) IN GENERAL.—The Special Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.

(b) NEGOTIATING FUNCTIONS.—The Special Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Special Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) CROSS REFERENCE.—

For provisions of law regarding general authority of the Special Representative with respect to trade agreements, see section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

Sec. 412. Establishment and Operation of Technical Offices.

(a) ESTABLISHMENT.—

(1) FOR NONAGRICULTURAL PRODUCTS.—The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) FOR AGRICULTURAL PRODUCTS.—The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) FUNCTIONS OF OFFICES.—The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

Sec. 413. Representation of United States Interests Before International Standards Organizations.

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Special Representative with respect to international standards-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c).

(b) REPRESENTATION OF UNITED STATES INTERESTS BY PRIVATE PERSONS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION MEMBER.—The term "organization member" means the private person who holds membership in a private international standards organization.

(B) PRIVATE INTERNATIONAL STANDARDS ORGANIZATION.—The term "Private international standards organization" means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose.

(2) IN GENERAL.—Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) INADEQUATE REPRESENTATION.—If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 417.

(4) ACTION BY ORGANIZATION MEMBER.—If within the 90-day period after the date on which notification is received under

paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) ACTION BY SECRETARY CONCERNED.—If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) REPRESENTATION OF UNITED STATES INTERESTS BY FEDERAL AGENCIES.—With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

Sec. 414. Standards Information Center.

(a) ESTABLISHMENT.—The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) FUNCTIONS.—The standards information center shall—

(1) serve as the central national collection facility for information relating to standards, certification systems, and standards-related activities, whether such standards, systems, or activities are public or private, domestic or foreign, or international, regional, national, or local;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be

collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 412(a)(2) within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 412 as may be requested by those offices in carrying out their functions.

Sec. 415. Contracts and Grants.

(a) IN GENERAL.—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the Special Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) LIMITATIONS.—Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Special Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made availa-

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ble. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Special Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

Sec. 416. Technical Assistance.

The Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

Sec. 417. Consultations With Representatives of Domestic Interests.

In carrying out the functions for which responsible under this title, the Special Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

SUBTITLE C—ADMINISTRATIVE AND JUDICIAL PROCEEDINGS REGARDING STANDARDS-RELATED ACTIVITIES

CHAPTER 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

Sec. 421. Right of Action Under This Chapter.

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

Sec. 422. Representations.

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Special Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement;

may make a representation to the Special Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance

with procedures that the Special Representative shall by regulation prescribe and must provide a reasonable indication that the standard-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

Sec. 423. Action After Receipt of Representations.

(a) REVIEW.—Upon receipt of any representation made under section 422, the Special Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a));

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

(b) RESOLUTION.—The Special Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

Sec. 424. Procedure After Finding by International Forum.

(a) IN GENERAL.—If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) CROSS REFERENCE.—

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

Sec. 441. Findings of Reciprocity Required in Administrative Proceedings.

(a) IN GENERAL.—Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Special Representative finds, and informs the agency concerned in writing, that—

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) EXEMPTIONS.—This section does not apply with respect to causes of action arising under—

(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or

(2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

Sec. 442. Not Cause for Stay in Certain Circumstances.

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

SUBTITLE D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

Sec. 451. Definitions.

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the Agreement on Technical Barriers to Trade Approved under section 2(a) of this Act.

(2) CERTIFICATION SYSTEM.—The term "certification system" means a system—

(A) for determining whether a product conforms with product standards applicable to that product; and

(B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity.

Such term also includes any modification of, or change to, any such system.

(3) FEDERAL AGENCY.—The term "Federal agency" means any of the following within the meaning of chapter 2 of part I of title 5, United States code:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) INTERNATIONAL CERTIFICATION SYSTEM.—The term "international certification system" means a certification system that is adopted by an international standards organization.

(5) INTERNATIONAL STANDARD.—The term "international standard" means any standard that is promulgated by an international standards organization.

(6) INTERNATIONAL STANDARDS ORGANIZATION.—The term "international standards organization" means any organization—

(A) the membership of which is open to representatives, whether public or private, of the United States and—

(i) all Parties to the Agreement, or

(ii) some but not all Parties of the Agreement; and

(B) that is engaged in international standards-related activities.

(7) INTERNATIONAL STANDARDS-RELATED ACTIVITY.—The term "international standards-related activity" means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international certification system, or both.

(8) PARTY TO THE AGREEMENT.—The term "Party to the Agreement" means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States.

(9) PRIVATE PERSON.—The term "private person" means—

(A) any individual who is a citizen or national of the United States; and

(B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) PRODUCT.—The term "product" means any natural or manufactured item.

(11) SECRETARY CONCERNED.—The term "Secretary concerned" means the Secretary of Commerce with respect to functions under this title relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this title relating to agricultural products.

(12) SPECIAL REPRESENTATIVE.—The term "Special Representative" means the Special Representative for Trade Negotiations.

(13) STANDARD.—The term "standard" means any of the following, and any amendment or change to any of the following:

(A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B).

(14) STANDARDS-RELATED ACTIVITY.—The term "standards-related activity" means the development, adoption, or application of any standard or any certification system.

(15) STATE.—The term "state" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States.

(16) STATE AGENCY.—The term "State agency" means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) UNITED STATES.—The term "United States", when used in a geographical context, means all States.

Sec. 452. Exemptions Under Title.

This title does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use

with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

Sec. 453. Reports to Congress on Operation of Agreement.

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the Special Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

Sec. 454. Effective Date.

This title shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date.[14]

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TITLE XI—MISCELLANEOUS PROVISIONS

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Sec. 1102.[15] Auction of Import Licenses.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) DEFINITION OF IMPORT LICENSE.—For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of this Act under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. App. 1701-1706),[16]

(3) authority under the headnotes of the Tariff Schedules of the United States, but not including any quantitative restriction imposed under section 22 of the Agricultural Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1-44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing an international agreement to which the United States is a party, including such agreements relating to commodities, but

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[14] The President, in his determination of Dec. 14, 1979 (44 FR 74781), authorized the U.S. Special Representative for Trade Negotiations to sign this Agreement on behalf of the United States.

[15] 19 U.S.C. 2581.

[16] See page 279 for text.

not including any agreement relating to cheese or dairy products.

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Sec. 1109. Reorganizing and Restructuring of International Trade Functions of the United States Government.

(a) IN GENERAL.—The President shall submit to the Congress, not later than July 10, 1979, a proposal to restructure the international trade functions of the Executive Branch of the United States Government.[17] In developing his proposal, the President shall consider, among other possibilities, strengthening the coordination and functional responsibilities of the Office of the Special Representative for Trade Negotiations to include, among other things, representation of the United States in all matters before the General Agreement on Tariffs and Trade, the establishment of a board of trade with a coordinating mechanism in the Executive Office of the President, and the establishment of a Department of International Trade and Investment. The recommendations of the President, as embodied in such proposal, should include a monitoring and enforcement structure which would insure protection of United States rights under agreements negotiated pursuant to the Tokyo Round of the Multilateral Trade Negotiations and all other elements of multilateral and bilateral international trade agreements. The proposal should result in an upgrading of commercial programs and commercial attachés overseas to assure that the United States trading partners are meeting their trade agreement obligations, particularly those entered into under such agreements, including the tendering procedures of the Agreement on Government Procurement.

(b) CONGRESSIONAL ACTION.—In order to ensure that the 96th Congress takes final action on a comprehensive reorganization of trade functions as soon as possible, the appropriate committee of each House of the Congress shall give the proposal by the President immediate consideration and shall make its best efforts to take final committee action to reorganize and restructure the international trade functions of the United States Government by November 10, 1979.

Sec. 1110. Study of Export Trade Policy.

(a) REVIEW OF EXPORT PROMOTION AND DISINCENTIVES.—The President shall review all export promotion functions of the executive branch and potential programmatic and regulatory disincentives to exports, and shall submit to the Congress a report of that review not later than July 15, 1980. The report should make particular reference to those activities which enhance the role of small- and medium-sized businesses in export trade.

(b) CONDITIONS OF COMPETITION STUDY.—Not later than July 15, 1980, the President shall submit to the Congress a study of the factors bearing on the competitive posture of United States producers

[17] Such a proposal was submitted to the Congress on Sept. 25, 1979, as Reorganization Plan No. 3 of 1979 (Reorganization of Functions Relating to International Trade). For text, see vol. III, page 197.

and the policies and programs required to strengthen the relative competitive position of the United States in world markets.

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Sec. 1112.[18] Concession-Related Revenue Losses to United States Possessions.

(a) DETERMINATIONS BY SECRETARY OF COMMERCE.—

(1) IMPACT OF CONCESSIONS.—Upon the request of the government of a possession of the United States, the Secretary of Commerce shall determine before January 1, 1980—

(A) whether a concession was granted by the United States in the Tokyo Round of the Multilateral Trade Negotiations on an article produced in that possession on which excise taxes are levied by the United States, and

(B) whether the sum of the amounts transferred and paid over to that possession attributable to such taxes for calendar year 1978 were equal to, or greater than, an amount equal to 10 percent of the tax revenues (not including revenues associated with petroleum or petroleum products) of that possession for 1978.

(2) ANNUAL DETERMINATIONS.—If the determinations of the Secretary under subparagraphs (A) and (B) of paragraph (1) are affirmative, then he shall determine, within 3 months after the close of each of the fiscal years 1980 through 1984, whether that concession contributed importantly to a reduction in the sum of the amounts transferred and paid over to that possession on account of such excise taxes for the most recently closed fiscal year. In making his determination, the Secretary shall take into account the extent to which other factors may have contributed to the reduction. The Secretary shall determine the amount of the reduction by subtracting the amount so transferred and paid over for the fiscal year from the amount which would have been transferred and paid over for the fiscal year if the products of the possession with respect to which the excise tax is imposed had maintained a share of the United States market for that product which was the share of the United States market for the product for fiscal year 1979.

(b) INCLUSION OF COMPENSATORY AMOUNT IN BUDGET OF THE UNITED STATES.—If the Secretary determines an amount under subsection (a)(2), he shall advise the President of that amount and the President may include, in the first Budget or Supplemental Budget submitted under the Budget and Accounting Act, 1921, after receiving such advice, an amount, equal to the amount so determined by the Secretary, for payment to the government of that possession to offset the amount of the reduction. If the President includes an amount different from the amount determined by the Secretary or no amount, the President shall promptly submit a report to the Congress setting forth his reasons for submitting such a different amount. Upon appropriation, such sums shall be paid promptly to the government of such possession. There are authorized to be ap-

[18] 19 U.S.C. 2582.

propriated such sums as may be necessary for the purposes of this section for fiscal years 1981 through 1985.

(c) REPORT TO THE CONGRESS.—On January 31, 1984, the President shall report to the Congress on the operation of this section, the reductions in revenues determined under this section, and any reductions which are likely to occur in fiscal years beginning after September 30, 1984. If he determines that such action is warranted, he shall recommend to the Congress in such report an extension of the application of this section to such fiscal years.

Sec. 1113. No Budget Authority for Any Fiscal Year Before Fiscal Year 1981.

Nothing in this Act shall be construed as authorizing the enactment of new budget authority for any fiscal year beginning before October 1, 1980.

Sec. 1114. Effective Date.

Except as otherwise provided in this title, this title shall take effect on the date of enactment of this Act.

c. Trade Expansion Act of 1962, as amended

Public Law 87-794 [H.R. 11970], 76 Stat. 872; 19 U.S.C. 1801-1991, approved October 11, 1962, as amended by Public Law 88-205 [H.R. 7885], 77 Stat. 379, approved December 16, 1963; Public Law 93-618 [H.R. 10710], 88 Stat. 1978, approved January 3, 1975; Public Law 96-39 [H.R. 4537], 93 Stat. 144 at 300, approved July 26, 1979; and by Public Law 96-223 [H.R. 3919], 94 Stat. 229 at 301, approved April 2, 1980

TITLE I—SHORT TITLE AND PURPOSES

Sec. 101. Short Title.

This Act may be cited as the "Trade Expansion Act of 1962".

Sec. 102. Statement of Purposes.

The purposes of this Act are, through trade agreements affording mutual trade benefits—

(1) to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce;

(2) to strengthen economic relations with foreign countries through the development of open and nondiscriminatory trading in the free world; and

(3) to prevent Communist economic penetration.

TITLE II—TRADE AGREEMENTS

CHAPTER 1—GENERAL AUTHORITY

Sec. 201. Basic Authority for Trade Agreements.

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that any of the purposes stated in section 102 will be promoted thereby, the President may—

(1) after June 30, 1962, and before July 1, 1967, enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) proclaim such modification or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional import restrictions, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Except as otherwise provided in this title, no proclamation pursuant to subsection (a) shall be made—

(1)[1] decreasing any rate of duty to a rate below 50 percent of the rate existing on July 1, 1962; or

(2) increasing any rate of duty to (or imposing) a rate more than 50 percent above the rate existing on July 1, 1934.

Sections 202, 211, 212, 213, 221, 222, 223, 224, 225, 226, 231.

[Repealed by the Trade Act of 1974, Public Law 93-618 (88 Stat. 1978)]

Sec. 232. Safeguarding National Security.

(a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b)[2] Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.[3] The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United

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[1] Public Law 90-14 (81 Stat. 14), May 5, 1967, states: "section 201(b)(1) (relating to limit on decrease in duty), sections 221, 223, and 224 (relating to certain requirements concerning negotiations), and section 253 (relating to staging requirements) of such Act shall apply with respect to dicyandiamide provided for in item 425.40 of the Tariff Schedules of the United States, and shall not apply with respect to limestone, when imported to be used in the manufacture of cement, provided for in item 513.34 of such Schedules."

[2] Subsection (b) was amended by sec. 127(d) of Public Law 93-618 (88 Stat. 1978 at 1993) which substituted "Secretary of the Treasury (hereinafter referred to as the 'Secretary')" for "Director of the Office of Emergency Planning (hereinafter in this section referred to as the 'Director')"; and which substituted "advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States" for "advice from other appropriate departments and agencies". Public Law 93-618 also substituted the last sentence of this subsection for one which formerly read as follows:

"If, as a result of such investigation, the Director is of the opinion that the said article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall promptly so advise the President, and, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security as set forth in this section, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security."

[3] All responsibilities vested in the Secretary of the Treasury by sec. 232 were transferred to the Secretary of Commerce, pursuant to sec. 5(a)(1) of Reorganization Plan No. 3 of 1979 (International Trade).

States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

(c) For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use of those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) A report shall be made and published upon the disposition of each request, application, or motion under subsection (b). The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).

(e)[4] (1) An action taken by the President under subsection (b) to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the pro-

[4] Subsec. (e) was added by sec. 402 of Public Law 96-223 (Windfall Profit Tax Act; 94 Stat. 301).

cedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term 'disapproval resolution' means only a joint resolution of either House of Congress the matter after resolving clause of which is as follows: 'That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under ---------- dated ----------.', the first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (b) of such section 232 for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

CHAPTER 5—ADMINISTRATIVE PROVISIONS

Sec. 241. [Repealed by Public Law 93-618 (88 Stat. 1978)]

Sec. 242. Interagency Trade Organization.

(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 201, 202, and 203 of the Trade Act of 1974.[5] Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the Tariff Commission under section 201(d) of the Trade Act of 1974,

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[5] All functions of the East-West Foreign Trade Board under sec. 411(a) and (b) of the Trade Act of 1974 were also transferred to this interagency organization by sec. 5(e) of Reorganization Plan No. 3 of 1979 (International Trade).

(3) advise the President of the results of hearings held pursuant to section 302(b)(2) of section 301 of the Trade Act of 1974[6] and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including The Tariff Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 302(b)(2) of section 301 of the Trade Act of 1974,[6] and for the carrying out of other functions assigned to the organization pursuant to this section.

Sec. 243. [Repealed by Public Law 93-618 (88 Stat. 1978)]

CHAPTER 6—GENERAL PROVISIONS

Sec. 251. Most-Favored-Nation Principle.

Except as otherwise provided in this title, in section 350(b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

Sec. 252. [Repealed by Public Law 93-618 (88 Stat. 1978)]

Sec. 253. [Repealed by Public Law 93-618 (88 Stat. 1978)]

Sec. 254. [Repealed by Public Law 93-618 (88 Stat. 1978)]

Sec. 255. Termination.

(a) [Repealed by Public Law 93-618 (88 Stat. 1978)]

(b) The President may at any time terminate, in whole or in part, any proclamation made under this title.

Sec. 256. [Repealed by Public Law 93-618 (88 Stat. 1978)]

Sec. 257. Relation to Other Laws.

(a)[7] * * *

(b)[7] * * *

(c) For purposes only of entering into trade agreements pursuant to the notices of intention to negotiate published in the Federal Register of May 28, 1960, and the Federal Register of November 23, 1960, the period during which the President is authorized to enter into foreign trade agreements under section 350 of the Tariff Act of 1930 is hereby extended from the close of June 30, 1962, until the close of December 31, 1962.

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[6] See page 53 for text. The reference to sec. 302(b)(2) was substituted for a reference to subsec. (c) and (d) by sec. 902(c) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300). The amendment made by sec. 902(c) should probably have also struck out the words "of section 301".

[7] Subsecs. (a) and (b) consisted of amendments to sec. 350 of the Tariff Act of 1930. See page 144 for the amended text of sec. 350.

(d) The second and third sentences of section 2(a) of the Act entitled "An Act to amend the Tariff Act of 1930", approved June 12, 1934, as amended (19 U.S.C., sec. 1352(a)), are each amended by striking out "this Act" and inserting in lieu thereof "this Act or the Trade Expansion Act of 1962".

(e)(1) Sections 5, 6, 7, and 8(a) of the Trade Agreements Extension Act of 1951 are repealed.

(2) Action taken by the President under section 5 of such Act and in effect on the date of the enactment of this Act shall be considered as having been taken by the President under section 231.

(3) Any investigation by the Tariff Commission under section 7 of such Act which is in progress on the date of the enactment of this Act shall be continued under section 301 as if the application by the interested party were a petition under such section for tariff adjustment under section 351. For purposes of section 301(f), such petition shall be treated as having been filed on the date of the enactment of this Act.

(f) Section 2 of the Act entitled "An Act to extend the authority of the President to enter into trade agreements under section 350 of the Tariff Act of 1930, as amended", approved July 1, 1954, is repealed. Any action (including any investigation begun) under such section 2 before the date of the enactment of this Act shall be considered as having been taken or begun under section 232.

(g)(1) Section 102(1) of the Tariff Classification Act of 1962 is amended by striking out "of schedules 1 to 7, inclusive,".

(2) Section 203 of the Tariff Classification Act of 1962 is amended to read as follows:

"SEC. 203. For purposes of applying sections 323 and 350 of the Tariff Act of 1930, as amended, and the Trade Expansion Act of 1962 with respect to the Tariff Schedules of the United States—

"(1) The rate of duty in rate column numbered 2 for each item in schedules 1 to 7, inclusive, of the Tariff Schedules of the United States shall be treated as the rate of duty existing on July 1, 1934.

"(2) The lowest preferential or nonpreferential rate of duty in rate column numbered 1 for each item in schedules 1 to 7, inclusive, of the Tariff Schedules of the United States on the effective date provided in section 501(a) of this Act shall be treated as the lowest preferential or nonpreferential rate of duty, respectively, existing on July 1, 1962; except that in the case of any such item included in a supplemental report made pursuant to section 101(c) of this Act to reflect a change proclaimed by the President after July 1, 1962 (other than a change to which the United States was committed on July 1, 1962), the rate treated as the lowest nonpreferential rate of duty existing on July 1, 1962, shall be the rate which the Commission specifically declares in such supplemental report to be the rate which, in its judgment, conforms to the fullest extent practicable to the rate regarded as existing on July 1, 1962, under section 256(4) of the Trade Expansion Act of 1962.

"(3) Legislation entering into force after the effective date provided for in section 501(a) of this Act which results in the permanent reclassification of any article without specifying the rate of duty applicable thereto, and proclamations under sec-

tion 202(c) of this Act, shall be considered as having been in effect since June 30, 1962."

(h) Nothing contained in this Act shall be construed to affect in any way the provisions of section 22 of the Agricultural Adjustment Act, or to apply to any import restriction heretofore or hereafter imposed under such section.

(i) * * *[8]

Sec. 258. References.

All provisions of law (other than this Act and the Trade Agreements Extension Act of 1951) in effect after June 30, 1962, referring to section 350 of the Tariff Act of 1930, to that section as amended, to the Act entitled "An Act to amend the Tariff Act of 1930", approved June 12, 1934, to that Act as amended, or to agreements entered into, or proclamations issued, under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations issued, pursuant to this Act.

TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

CHAPTER 1—ELIGIBILITY FOR ASSISTANCE

[Sections 301 and 302 were repealed by Public Law 93-618 (88 Stat. 1978).]

CHAPTER 2—ASSISTANCE TO FIRMS

[Sections 311 through 315 were repealed by Public Law 93-618 (88 Stat. 1978).]

Sec. 316. Administration of Financial Assistance.

(a) In making and administering guarantees, agreements for deferred participation, and loans under section 314, the Secretary of Commerce may—

(1) require security for any such guarantee, agreement, or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees, agreements, or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees, agreements, or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any

[8] Subsec. (i) amended the Tariff Act of 1930 by adding a new sec. 323. See page 127 for text of sec. 323.

real or personal property conveyed to or otherwise acquired by him in connection with such guarantees, agreements, or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 314.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

Sec. 317. Tax Assistance.

[Section 317(a) was repealed by Public Law 93-618 (88 Stat. 1978)]

(b) Effective with respect to net operating losses for taxable years ending after December 31, 1955, subsection (b) of section 172 of the Internal Revenue Code of 1954 (relating to net operating loss carrybacks and carryovers) is amended to read as follows:

"(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

"(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

"(A)(i) Except as provided in clause (ii), a net operating loss for any taxable year ending after December 31, 1957, shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss.

"(ii) In the case of a taxpayer with respect to a taxable year ending on or after December 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962, a net operating loss for such taxable year shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

"(B) Except as provided in subparagraph (C), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

"(C) In the case of a taxpayer which is a regulated transportation corporation (as defined in subsection (j)(1)), a net operating loss for any taxable year ending after December 31, 1955, shall (except as provided in subsection (j)) be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss.

"(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—Except as provided in subsections (i) and (j), the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the 'loss year') shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which sum loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

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"(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (6) thereof; and

"(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

"(3) SPECIAL RULES.—

"(A) Paragraph (1)(A)(ii) shall apply only if—

"(i) there has been filed, at such time and in such manner as may be prescribed by the Secretary or his delegate, a notice of filing of the application under section 317 of the Trade Expansion Act of 1962 for tax assistance, and, after its issuance, a copy of the certification under such section, and

"(ii) the taxpayer consents in writing to the assessment, within such period as may be agreed upon with the Secretary or his delegate, of any deficiency for any year to the extent attributable to the disallowance of a deduction previously allowed with respect to such net operating loss, even though at the time of filing such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

"(B) In the case of—

"(i) a partnership and its partners, or

"(ii) an electing small business corporation under subchapter S and its shareholders,

paragraph (1)(A)(ii) shall apply as determined under regulations prescribed by the Secretary or his delegate. Such paragraph shall apply to a net operating loss of a partner or such a shareholder only if it arose predominantly from losses in respect of which certifications under section 317 of the Trade Expansion Act of 1962 were filed under this section."

(c) Subsection (h) of section 6501 of the Internal Revenue Code of 1954 (relating to limitations on assessment and collection in the case of net operating loss carrybacks) is amended by inserting before the period: ", or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later."

(d) Section 6511(d)(2)(A) of the Internal Revenue Code of 1954 (relating to special period of limitation on credit or refund with respect to net operating loss carrybacks) is amended to read as follows:

"(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period

prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

"(i) with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

"(ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback."

Sec. 318. Protective Provisions.

(a) Each recipient of adjustment assistance under section 313, 314, or 317 shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary of Commerce may prescribe.

(b) The Secretary of Commerce and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient pertaining to adjustment assistance under sections 313, 314, and 317.

(c) No adjustment assistance shall be extended under section 313, 314, or 317 to any firm unless the owners, partners, or officers certify to the Secretary of Commerce—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance, and

(2) the fees paid or to be paid to any such person.

(d) No financial assistance shall be provided to any firm under section 314 unless the owners, partners, or officers shall execute an agreement binding them and the firm for a period of 2 years after such financial assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary of Commerce shall have determined involve discretion with respect to the provision of such financial assistance.

Sec. 319. Penalties.

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Secretary of Commerce under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, shall be fined not more than $5,000 or imprisoned for not more than two years, or both.

Sec. 320. Suits.

In providing technical and financial assistance under sections 313 and 314, the Secretary of Commerce may sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 313 and 314 from the application of sections 507(b) and 2679 of title 28 of the United States Code, and of section 367 of the Revised Statutes (5 U.S.C., sec. 316).

CHAPTER 3—ASSISTANCE TO WORKERS

[Sections 321 through 338 were repealed by Public Law 93-618 (88 Stat. 1978).]

CHAPTER 4—TARIFF ADJUSTMENT

Sec. 351. Authority.

(a)(1) After receiving an affirmative finding of the Tariff Commission [9] under section 301(b) with respect to an industry, the President may proclaim such increase in, or imposition of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry as he determines to be necessary to prevent or remedy serious injury to such industry.

(2) If the President does not, within 60 days after the date on which he receives such affirmative finding, proclaim the increase in, or imposition of, any duty or other import restriction on such article found and reported by the Tariff Commission [9] pursuant to section 301(e)—

(A) he shall immediately submit a report to the House of Representatives and to the Senate stating why he has not proclaimed such increase or imposition, and

(B) such increase or imposition shall take effect (as provided in paragraph (3)) upon the adoption by both Houses of the Congress (within the 60-day period following the date on which the report referred to in subparagraph (A) is submitted to the House of Representatives and the Senate), by the yeas and nays by the affirmative vote of a majority of the authorized

[9] The United States Tariff Commission was renamed the United States International Trade Commission pursuant to sec. 171(a) of Public Law 93-618.

membership of each House, of a concurrent resolution stating in effect that the Senate and House of Representatives approve the increase in, or imposition of, any duty or other import restriction on the article found and reported by the Tariff Commission.[9]

For purposes of subparagraph (B), in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die. The report referred to in subparagraph (A) shall be delivered to both Houses of the Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House of Representatives is not in session and to the Secretary of the Senate if the Senate is not in session.

(3) In any case in which the contingency set forth in paragraph (2)(B) occurs, the President shall (within 15 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was found and reported by the Tariff Commission [9] pursuant to section 301(e).

(4) The President may, within 60 days after the date on which he receives an affirmative finding of the Tariff Commission [9] under section 301(b) with respect to an industry, request additional information from the Tariff Commission.[9] The Tariff Commission shall, as soon as practicable but in no event more than 120 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report. For purposes of paragraph (2), the date on which the President receives such supplemental report shall be treated as the date on which the President received the affirmative finding of the Tariff Commission [9] with respect to such industry.

(b) No proclamation pursuant to subsection (a) shall be made—

(1) increasing any rate of duty to a rate more than 50 percent above the rate existing on July 1, 1934, or, if the article is dutiable but no rate existed on July 1, 1934, the rate existing at the time of the proclamation,

(2) in the case of an article not subject to duty, imposing a duty in excess of 50 percent ad valorem.

For purposes of paragraph (1), the term "existing on July 1, 1934" has the meaning assigned to such term by paragraph (5) of section 256.

(c)(1) Any increase in, or imposition of, any duty or other import restriction proclaimed pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951—

(A) may be reduced or terminated by the President when he determines, after taking into account the advice received from the Tariff Commission [9] under subsection (d)(2) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest, and

(B) unless extended under section 203 of the Trade Act of 1974,[10] shall terminate not later than the close of the date

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[10] This reference to sec. 203 of the Trade Act of 1974 was substituted in lieu of a reference to par. (2) of this subsection by sec. 602(c) of Public Law 93-608 (88 Stat. 2072).

which is 4 years (or in the case of any such increase or imposition proclaimed pursuant to such section 7, 5 years) after the effective date of the initial proclamation or the date of the enactment of this Act, whichever date is the later.

(2)[11] * * *

(d)(1) So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 remains in effect, the Tariff Commission[9] shall keep under review developments with respect to the industry concerned, and shall make annual reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the Tariff Commission[9] shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.

(3)[11] * * *

(4) In advising the President under this subsection as to the probable economic effect on the industry concerned, the Tariff Commission[9] shall take into account all economic factors which it considers relevant including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

(5) Advice by the Tariff Commission[9] under this subsection shall be given on the basis of an investigation during the course of which the Tariff Commission[9] shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(e) The President, as soon as practicable, shall take such action as he determines to be necessary to bring trade agreements entered into under section 350 of the Tariff Act of 1930 into conformity with the provisions of this section. No trade agreement shall be entered into under section 201(a) unless such agreement permits action in conformity with the provisions of this section.

Sec. 352. Orderly Marketing Agreements.

(a) After receiving an affirmative finding of the Tariff Commission[9] under section 301(b) with respect to an industry, the President may, in lieu of exercising the authority contained in section 351(a)(1) but subject to the provisions of section 351(a) (2), (3), and (4), negotiate international agreements with foreign countries limiting the export from such countries and the import into the United States of the article causing or threatening to cause serious injury to such industry, whenever he determines that such action would be more appropriate to prevent or remedy serious injury to such industry than action under section 351(a)(1).

(b) In order to carry out an agreement concluded under subsection (a), the President is authorized to issue regulations governing the entry or withdrawal from warehouse of the article covered by such agreement. In addition, in order to carry out a multilateral

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[11] Repealed by Public Law 93-618 (88 Stat. 1978). See sec. 232 of Public Law 93-618 for similar text.

agreement concluded under subsection (a) among countries accounting for a significant part of world trade in the article covered by such agreement, the President is also authorized to issue regulations governing the entry or withdrawal from warehouse of the like article which is the product of countries not parties to such agreement.

CHAPTER 5—ADVISORY BOARD

Sec. 361. [Repealed by Public Law 93-618 (88 Stat. 1978)]

TITLE IV—GENERAL PROVISIONS

[Sections 401, 402, 403, 404, and 405 (1), (3), (4), and (5) were repealed by Public Law 93-618 (88 Stat. 1978)]

Sec. 405. Definitions.

For purposes of this Act—

* * * * * * *

(2) The term "duty or other import restriction" includes (A) the rate and form of an import duty, and (B) a limitation, prohibition, charge, and exaction other than duty, imposed on importation or imposed for the regulation of imports.

* * * * * * *

(6) The term "modification", as applied to any duty or other import restriction, includes the elimination of any duty.

d. Tariff Act of 1930, as amended

Partial text of Public Law 71-361 [H.R. 2667], 19 U.S.C. 1303-1677, approved June 17, 1930, as amended

AN ACT To provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * * * *

Sec. 303. Countervailing Duties.[1]

(a) LEVY OF COUNTERVAILING DUTIES.—(1) Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act),[2] whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association cartel or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there are affirmative determinations by the Commission under title VII; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.[3]

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[1] Sec. 303 was amended and restated by sec. 331(a) of Public Law 93-618 (Trade Act of 1974; 88 Stat. 2049).

[2] The words to this point in par. (1) were added by sec. 103(a) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).

[3] Paragraphs (3) through (6), which previously appeared at the point, were struck out by sec. 103(b) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).

(3) [Repealed by Sec. 103(b)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).]

(4) [Repealed by Sec. 103(b)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).]

(5) [Repealed by Sec. 103(b)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).]

(6) [Repealed by Sec. 103(b)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).]

(b)[4] The duty imposed under subsection (a) shall be imposed, under regulations prescribed by the administering authority (as defined in section 771(1)), in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

(1) no determination by the United States International Trade Commission under section 703(a), 704, or 705(b) shall be required,

(2) an investigation may not be suspended under section 704(c),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705 (a)(2) or (b)(4)(A), and

(4) any reference to determinations by the Commission, or to the suspension of an investigation under section 704(c) which are not permitted or required by this subsection shall be disregarded.

(c) [Repealed by Sec. 103(b)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).]

(d) TEMPORARY PROVISION WHILE NEGOTIATIONS ARE IN PROCESS.—(1) It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines,[5] at any time during the four-year period beginning on the date of the enactment of the Trade Act of 1974, that—

(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(B) there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to

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[4] Subsection (b) was amended and restated by sec. 103(b) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).

[5] All functions of the Secretary of the Treasury under sec. 303 (with some exceptions) were transferred to the Secretary of Commerce by sec. 5(a)(1) of Reorganization Plan No. 3 of 1979 (International Trade).

seriously jeopardize the satisfactory completion of such negotiations;

the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during the remainder of such four-year period. This paragraph shall not apply with respect to any case involving non-rubber footwear pending on the date of the enactment of the Trade Act of 1974 until and unless agreements which temporize imports of non-rubber footwear become effective.

(3) The determination of the Secretary under paragraph (2) may be revoked by him, in his discretion, at any time, and any determination made under such paragraph shall be revoked whenever the basis supporting such determination no longer exists. The additional duty provided under this section shall apply with respect to any affected articles or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of any revocation under this subsection in the Federal Register.

(4)(A) The four-year period referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:

(i) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

(ii) The date of the enactment of such implementing legislation.

(iii) September 30, 1979.

(B)[6] Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if title VII of the Tariff Act of 1930 were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 701(b) of such Act), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until whichever of the following dates first occurs:

(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979.

(ii) The date such determination is revoked under paragraph (3).

(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e)(2).

(e) REPORTS TO CONGRESS.—(1) Whenever the Secretary makes a determination under subsection (d)(2) with respect to any article or merchandise, he shall promptly transmit to the House of Representatives and the Senate a document setting forth the determination, together with his reasons therefor.

(2) If, at any time after the document referred to in paragraph (1) is delivered to the House of Representatives and the Senate, either

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[6] Subpar. (B) was amended and restated by sec. 105 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 193).

the House or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval under the procedures set forth in section 152, then such determination under subsection (d)(2) with respect to such article or merchandise shall have no force or effect beginning with the day after the date of the adoption of such resolution of disapproval, and the additional duty provided under this section with respect to such article or merchandise shall apply with respect to articles or merchandise entered, or withdrawal from warehouse, for consumption on or after such day.

(f)[7] CROSS REFERENCE.—

For provisions of law applicable in the case of articles and merchandise which are the product of countries under the Agreement within the meaning of section 701(b) of this Act, see title VII of this Act.

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Sec. 323. Conservation of Fishery Resources.[8]

Upon the convocation of a conference on the use or conservation of international fishery resources, the President shall, by all appropriate means at his disposal, seek to persuade countries whose domestic fishing practices or policies affect such resources, to engage in negotiations in good faith relating to the use or conservation of such resources. If, after such efforts by the President and by other countries which have agreed to engage in such negotiations, any other country whose conservation practices or policies affect the interests of the United States and such other countries, has, in the judgment of the President, failed or refused to engage in such negotiations in good faith, the President may, if he is satisfied that such action is likely to be effective in inducing such country to engage in such negotiations in good faith, increase the rate of duty on any fish (in any form) which is the product of such country, for such time as he deems necessary, to a rate not more than 50 percent above the rate existing on July 1, 1934.

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION.

Sec. 330.[9] Organization of Commission.

(a) MEMBERSHIP.—The United States International Trade Commission (referred to in this subtitle as the "Commission") shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before January 3, 1975) shall not be eligible for

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[7] Subsection (f) was added by sec. 103(b)(3) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 190).

[8] Sec. 323 was added by sec. 257(i) of Public Law 87-794 (76 Stat. 883).

[9] As amended by title I of Public Law 93-618 (Trade Act of 1974; 88 Stat. 2009-2011); sec. 1801(a) of Public Law 94-455 (90 Stat. 1762); sec. 1 and sec. 2(a) of Public Law 95-106 (91 Stat. 867); and Public Law 95-430 (92 Stat. 1020).

reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) TERMS OF OFFICE.—The terms of office of the commissioners holding office on January 3, 1975, which (but for this sentence) would expire on June 16, 1975, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of this term of office until his successor is appointed and qualified.

(c) CHAIRMAN AND VICE CHAIRMAN; QUORUM.—(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term—

(i) either of the two commissioners most recently appointed to the Commission as of the beginning date of the term of office for which the designation of chairman is to be made; or

(ii) any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the limitation set forth in subparagraph (A)(i).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) VOTING PROCEDURES.—(1) In a proceeding in which the Commission is required to determine—

(A) under section 201 of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereinafter in this subsection referred to as "serious injury"), or

(B) under section 406 of such Act, whether market disruption exists.

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 201 or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exits, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 201(d)(1) of such Act or the finding described in section 406(a)(3) of such Act as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections 202 and 203 of such Act be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 203(b) of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of sections 202 and 203 of such Act be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of sections 202 and 203 of such Act be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a determination that serious injury exists, or that market disruption exists, the Commis-

sion shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commissioner shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 203(c)(1) of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act the second blank space in the concurrent resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ....., ..., and ....." The three blank spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held, such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2) [10] There are authorized to be appropriated to the Commission for necessary expenses for fiscal year 1983 not to exceed $19,737,000. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

Sec. 331. General Powers.[11]

(a)(1)(A) Except as provided in paragraph (2), the chairman of the Commission shall—

(i) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(ii) procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, and

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[10] Sec. 1(a) of Public Law 97-456 (96 Stat. 2503) amended and restated par 2.

[11] As amended by sec. 3 of Public Law 95-106 (91 Stat. 868). Further amended in subsec. (a)(1) by sec. 1(b) of Public Law 97-456 (96 Stat. 2503).

(iii) exercise and be responsible for all other administrative functions of the Commission.

(B) The chairman of the Commission may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Commission.

(C) Any decision by the chairman under subparagraph (A) or (B) shall be subject to disapproval by a majority vote of all the commissions in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS–15 of the General Schedule in section 5332 of Title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matter except to the extent that the Commission has adopted the policy being expressed.

(b) APPLICATION OF CIVIL SERVICE LAW.—Except for employees excepted under civil service rules, all employees of the Commission shall be appointed from lists of eligibles to be supplied by the Civil Service Commission [12] and in accordance with the civil service law.

(c) EXPENSES.—All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) PRINCIPAL OFFICE AT WASHINGTON.—The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) OFFICE AT NEW YORK.—The Commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) OFFICIAL SEAL.—The Commission is authorized to adopt an official seal, which shall be judicially noticed.

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[12] This authority was transferred from the Civil Service Commission to the Director of the Office of Personnel Management by Reorganization Plan No. 2 of 1978 and E.O. 12107, Dec. 28, 1978.

Sec. 332. Investigations.

(a) INVESTIGATIONS AND REPORTS.—It shall be the duty of the Commission to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

(b) INVESTIGATIONS OF TARIFF RELATIONS.—The Commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) INVESTIGATION OF PARIS ECONOMY PACT.—The Commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) INFORMATION FOR PRESIDENT AND CONGRESS.—In order that the President and the Congress may secure information and assistance, it shall be the duty of the Commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the Commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the Commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the commission deems it advisable;

(4) Ascertain import costs of such representative articles so selected;

(5) Ascertain the grower's, producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United

States and imported articles in the principal markets of the United States.

(e) DEFINITIONS.—When used in this subdivision and in subdivision (d)—

(1) The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2)[13] The term "import cost" means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

(f) The Tariff Commission is hereby directed, within eight months from the passage of this Act, to ascertain the approximate average cost per barrel to the oil refineries located on the Atlantic seaboard of crude petroleum delivered to them from the oil fields of the United States during the three years preceding 1930, and the present approximate average cost per barrel of crude petroleum from Lake Maracaibo, Venezuela, delivered to the same points. Such relative costs shall be immediately certified to the Speaker of the House of Representatives and to the President of the Senate for the information of the Congress.

(g)[14] REPORTS TO THE PRESIDENT AND CONGRESS.—The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 1337 of this title during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the commission under such section during such year and the date on which each such investigation was commenced.

Sec. 333.[15] Testimony and Production of Papers.

(a) AUTHORITY TO OBTAIN INFORMATION.—For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corpo-

[13] The definition of "import cost" was amended, effective Jan. 1, 1981, by sec. 202(a)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 201).

[14] Subsec. (g) was amended and restated by secs. 173 and 341 of Public Law 93-618 (Trade Act of 1974; 88 Stat. 2010, 2056).

[15] As amended by sec. 9 of Public Law 85-686 (72 Stat. 679).

ration, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the Commission may prescribe, information in their possession pertaining to such investigation. Any member of the Commission may sign subpoenas, and members and agents of the Commission, when authorized by the Commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.—Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any district or territorial court of the United States or the United States District Court for the District of Columbia in requiring attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c)[16] MANDAMUS.—At the request of the Commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part of any order of the Commission made in pursuance thereof.

(d) DEPOSITION.—The Commission may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

(e) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the Commission, shall severally be enti-

[16] Formerly, this request was required to be submitted through the Attorney General of the United States. Such language was struck out by sec. 174(1) of Public Law 93-618 (Trade Act of 1974; 88 Stat. 2011).

tled to the same fees and mileage as are paid for like services in the courts of the United States.[17]

(f) STATEMENTS UNDER OATH.—The Commission is authorized, in order to ascertain any facts required by subdivision (d) of section 1332 of this title to require any importer and any American grower, producer, manufacturer, or seller to file with the Commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g)[18] REPRESENTATION IN COURT PROCEEDINGS.—The Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, at the request of the Commission, by the Attorney General of the United States.

Sec. 334. Cooperation with Other Agencies.

The Commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishment of the Government, and such departments and independent establishments of the Government shall cooperate fully with the Commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the Commission and shall detail, from time to time, such officials and employees to said commission as he may direct.

Sec. 335.[19] Rules and Regulations.

The Commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

Sec. 336. Equalization of Costs of Production.

(a)[20] CHANGE OF CLASSIFICATION OR DUTIES.—In order to put into force and effect the policy of Congress by this chapter intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the Commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The commission shall report to the President the results of the investigation and its find-

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[17] A proviso, which previously appeared at this point and related to the immunity from prosecution of any natural person compelled to testify or produce evidence in obedience to the subpoena of the Commission, was struck out by sec. 229 of Public Law 91-452 (84 Stat. 930).

[18] Subsec. (g) was added by sec. 174 of Public Law 93-618 (Trade Act of 1974; 88 Stat. 2011).

[19] Sec. 335 was added by sec. 9(c) of Public Law 85-686 (72 Stat. 680). Previously, the authorization under this section was contained in sec. 336(a) which was struck out also by sec. 9 of Public Law 85-686.

[20] Subsec. (a) was amended by sec. 9(c)(1) of Public Law 85-686 (72 Stat. 679).

ings with respect to such differences in costs of production. If the Commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by the statute.

(b)[21] * * *

(c) PROCLAMATION BY THE PRESIDENT.—The President shall by proclamation approve the rates of duty and changes in classification[22] specified in any report of the Commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the Commission to be necessary to equalize such differences in costs of production.

(d) EFFECTIVE DATE OF RATES AND CHANGES.—Commencing thirty days after the date of any Presidential proclamation of approval the increased or decreased rates of duty and changes in classification[23] specified in the report of the commission shall take effect.

(e) ASCERTAINMENT OF DIFFERENCES IN COSTS OF PRODUCTION.—In ascertaining under this section the differences in costs of production, the Commission shall take into consideration, in so far as it finds it practicable:

(1) IN THE CASE OF A DOMESTIC ARTICLE.—(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) IN THE CASE OF A FOREIGN ARTICLE.—(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to

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[21] Subsec. (b), which concerned change to American selling price, was struck effective January 1, 1981, out by sec. 202(a)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 202).

[22] The words "and in basis of value" which previously appeared at this point, were struck out effective Jan. 1, 1981, by sec. 202(a)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 202).

[23] The words "or in basis of value" which previously appeared at this point, were struck out effective Jan. 1, 1981, by sec. 202(a)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 202).

the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) MODIFICATION OF CHANGES IN DUTY.—Any increased or decreased rate of duty or change in classification [23] which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) PROHIBITION AGAINST TRANSFERS FROM THE FREE LIST TO THE DUTIABLE LIST OR FROM THE DUTIABLE LIST TO THE FREE LIST.—Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Subtitle I of this chapter, or in any amendatory act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such articles shall exceed the maximum ad valorem rate so specified.

(h) DEFINITIONS.—For the purpose of this section—

(1) The term "domestic article" means an article wholly or in part the growth or product of the United States; and the term "foreign article" means an article wholly or in part the growth or product of a foreign country.

(2) The term "United States" includes the several States and Territories and the District of Columbia.

(3) The term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term "cost of production", when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) RULES AND REGULATIONS OF PRESIDENT.—The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) [24] * * *

(k) INVESTIGATIONS PRIOR TO JUNE 17, 1930.—All uncompleted investigations instituted prior to June 17, 1930, under the provisions of sections 154–159 of this title, including investigations in which

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[24] Subsec. (j), which concerned rules and regulations of the Secretary of the Treasury, was struck out, effective Jan. 1, 1981, by sec. 202(a)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 202).

the President has not proclaimed changes in classification [23] or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

Sec. 337.[25] Unfair Practices in Import Trade.

(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION; TIME LIMITS.—(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health, Education, and Welfare,[26] the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part,[27] may come within the purview of section 303 or of subtitle B of title VII of the Tariff Act of 1930,[28] it shall promptly notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by such section and such Act. If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which

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[25] As amended and restated by sec. 341 of Public Law 96-618 (Trade Act of 1974; 88 Stat. 2053).

[26] Such Department was redesignated as the Department of Health and Human Services pursuant to Public Law 96-88 (93 Stat. 696).

[27] The reference to a partial or whole matter was added by sec. 1105(a)(1) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 310).

[28] This reference to subtitle B of title VII of the Tariff Act of 1930 was substituted in lieu of a reference to the Antidumping Act, 1921 (which was repealed), by sec. 106 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 193).

are within the purview of section 303, 701, or 731 of this Act, it shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension. Any final decision of the Secretary under section 303 of this Act or by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 303, 701, or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.[29]

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f)[30] may appeal such determination to the United States Court of Appeals for the Federal Circuit[31] for review in accordance with chapter 7 of title 5, United States Code.[32] Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code.[33]

(d) EXCLUSION OF ARTICLES FROM ENTRY.—If the Commission determines, as a result of an investigation under this section, that

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[29] The final 4 sentences of par. (3) were added by sec. 1105(a)(2) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 310).

[30] The reference to subsection (f) was added by sec. 1105(c) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 311).

[31] The words "Court of Appeals for the Federal Circuit" were substituted in lieu of "Court of Customs and Patent Appeals" by sec. 163(a)(4) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49).

[32] The words "for review in accordance with chapter 7 of title 5, United States Code" were added by sec. 6041) of Public Law 96-417 (94 Stat. 1744).

[33] Sec. 604(2) of Public Law 96-417 (94 Stat. 1744) substituted this sentence in lieu of previous text which read as follows: "Such Court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court."

there is violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(f)(1)[34] CEASE AND DESIST ORDERS.—In lieu of taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

(2)[34] Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $10,000 or the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the

[34] The paragraph designation "(1)" and a new par. (2) was added by sec. 1105(b) of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 310).

United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g) REFERRALS TO THE PRESIDENT.—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), or (f), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), or (f) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), or (f) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the President does not approve such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(h) PERIOD OF EFFECTIVENESS.—Except as provided in subsections (f) and (g), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exists.

(i) IMPORTATION BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), or (f), in cases based on claims of United States letters patent, shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, a patent owner adversely affected shall be entitled to reasonable and entire compensation in an action before the United

States Claims Court [35] pursuant to the procedures of section 1498 of title 28, United States Code.

(j) DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term "United States" means the customs territory of the United States as defined in general headnote 2 of the Tariff Schedules of the United States.

Sec. 338. Discrimination by Foreign Countries.

(a) ADDITIONAL DUTIES.—The President when he finds that the public interest will be served thereby shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country—

(1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like article of every foreign country; or

(2) Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

(b) EXCLUSION FROM IMPORTATION.—If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is hereby authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

(c) APPLICATION OF PROCLAMATION.—Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) DUTIES TO OFFSET COMMERCIAL DISADVANTAGES.—Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served

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[35] Reference to the United States Claims Court was substituted in lieu of a reference to the Court of Claims by sec. 160(a)(5) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49).

thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) DUTIES TO OFFSET BENEFITS TO THIRD COUNTRY.—Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate of rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) FORFEITURE OF ARTICLES.—All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this Act shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) ASCERTAINMENT BY COMMISSION OF DISCRIMINATIONS.—It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) RULES AND REGULATIONS OF SECRETARY OF TREASURY.—The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) DEFINITION.—When used in this section the term "foreign country" means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

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PART III—PROMOTION OF FOREIGN TRADE

Sec. 350.[36] Foreign Trade Agreements.

(a) AUTHORITY OF PRESIDENT; MODIFICATION AND DECREASE OF DUTIES; ALTERING IMPORT RESTRICTIONS.—(1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided,* That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made—

(A) Increasing by more than 50 per centum any rate of duty existing on July 1, 1934; except that a specific rate of duty existing on July 1, 1934, may be converted to its ad valorem

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[36] Sec. 350 was added by sec. 1, 48 Stat. 943. It has been amended at 57 Stat. 125, 59 Stat. 410, 63 Stat. 698, 69 Stat. 162, 72 Stat. 673, 76 Stat. 881, and 93 Stat. 202.

equivalent based on the value of imports of the article concerned during the calendar year 1934 (determined in the same manner as provided in subparagraph (D)(ii)) and the proclamation may provide an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

(B) Transferring any article between the dutiable and free lists.

(C) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, or with respect to which notice of intention to negotiate was published in the Federal Register on November 16, 1954, decreasing by more than 50 per centum any rate of duty existing on January 1, 1945.

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad valorem rates aggregating more than 50 per centum), the rate 50 per centum ad valorem (or a combination of ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per centum ad valorem or the rate (or a combination of rates), however stated, the ad valorem equivalent of which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 402 of this Act (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

(E) In order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the rates provided for in paragraph (4)(A) of this subsection.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph and of subparagraph (B) of paragraph (4) of this subsection, the provisions of any proclamation made under paragraph (1)(B) of this subsection, and the provisions of any proclamation of suspension under paragraph (5) of this subsection, shall be in effect from and after such time as is specified in the proclamation.

(B) In the case of any decrease in duty to which paragraph (2)(D) of this subsection applies—

(i) if the total amount of the decrease under the foreign trade agreement does not exceed 15 per centum of the rate existing

on January 1, 1955, the amount of decrease becoming initially effective at one time shall not exceed 5 per centum of the rate existing on January 1, 1955;

(ii) except as provided in clause (i), not more than one-third of the total amount of the decrease under the foreign trade agreement shall become initially effective at one time; and

(iii) no part of the decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year.

(C) No part of any decrease in duty to which the alternative specified in paragraph (2)(D)(i) of this subsection applies shall become initially effective after the expiration of the three-year period which begins on July 1, 1955. If any part of such decrease has become effective, then for purposes of this subparagraph any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period expires.

(D) If (in order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955) the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed any limitation specified in paragraph (2) (C) or (D) or paragraph (4) (A) or (B) of this subsection or subparagraph (B) of this paragraph by not more than whichever of the following is lesser:

(i) The difference between the limitation and the next lower whole number, or

(ii) One-half of 1 per centum ad valorem.

In the case of a specific rate (or of a combination of rates which includes a specific rate), the one-half of 1 per centum specified in clause (ii) of the preceding sentence shall be determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purposes of paragraph (2)(D)(ii) of this subsection.

(4)(A) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made, in order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the following rates:

(i) The rate which would result from decreasing the rate existing on July 1, 1958, by 20 per centum of such rate.

(ii) Subject to paragraph (2)(B) of this subsection, the rate 2 per centum ad valorem below the rate existing on July 1, 1958.

(iii) The rate 50 per centum ad valorem or, in the case of any article subject to a specific rate of duty or to a combination of rates including a specific rate, any rate (or combination of rates), however stated, the ad valorem equivalent of which has been determined as 50 per centum ad valorem.

The provisions of clauses (ii) and (iii) of this subparagraph and of subparagraph (B)(ii) of this paragraph shall, in the case of any article, subject to a combination of ad valorem rates of duty, apply to the aggregate of such rates; and, in the case of any article, subject to a specific rate of duty or to a combination of rates including a specific rate, such provisions shall apply on the basis of the ad va-

lorem equivalent of such rate or rates, during a representative period (whether or not such period includes July 1, 1958), determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purpose of paragraph (2)(D)(ii) of this subsection.

(B)(i) In the case of any decrease in duty to which clause (i) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 10 per centum of the rate of duty existing on July 1, 1958, or, in any case in which the rate has been increased since that date, exceed such 10 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(ii) In the case of any decrease in duty to which clause (ii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 1 per centum ad valorem or, in any case in which the rate has been increased since July 1, 1958, exceed such 1 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(iii) In the case of any decrease in duty to which clause (iii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed one-third of the total amount of the decrease under the foreign trade agreement.

(C) In the case of any decrease in duty to which subparagraph (A) of this paragraph applies (i) no part of a decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year, nor after the first part shall have been in effect for a period or periods aggregating more than three years, and (ii) no part of a decrease shall become initially effective after the expiration of the four-year period which begins on July 1, 1962. If any part of a decrease has become effective, then for the purposes of clauses (i) and (ii) of the preceding sentence any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period or the four-year period, as the case may be, expires.

(5)[37] * * *

(6) The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

(b) CUBA; PREFERENTIAL CUSTOMS TREATMENT: DECREASE OF RATES.—Nothing in this section or the Trade Expansion Act of 1962 shall be construed to prevent the application, with respect to rates of duty established under this section or the Trade Expansion Act of 1962 pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11,

[37] Par. (5) was repealed by sec. 257(b) of Public Law 87-794 (76 Stat. 882).

1902, or to preclude giving effect to an agreement with Cuba concluded under this section or the Trade Expansion Act of 1962, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba. Nothing in this chapter or the Trade Expansion Act of 1962 shall be construed to preclude the application to any product of Cuba (including products preferentially free of duty) of a rate of not higher than the rate applicable to the like products of other foreign countries (except the Philippines), whether or not the application of such rate involves any preferential customs treatment. No rate of duty on products of Cuba shall be decreased—

(1) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, by more than 50 per centum of the rate of duty existing on January 1, 1945, with respect to products of Cuba.

(2) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1962, below the applicable alternative specified in subsection (a)(2) (C) or (D) or (4)(A) of this section (subject to the applicable provisions of subsection (a)(3) (B), (C), and (D) and (4) (B) and (C) of this section), each such alternative to be read for the purposes of this paragraph as relating to the rate of duty applicable to products of Cuba. With respect to products of Cuba, the limitation of subsection (a)(2)(D)(ii) or (4)(A)(iii) of this section may be exceeded to such extent as may be required to maintain an absolute margin of preference to which such products are entitled.

(3) In order to carry out a foreign trade agreement entered into after June 30, 1962, and before July 1, 1967, below the lowest rate permissible by applying title II of the Trade Expansion Act of 1962 to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on July 1, 1962, with respect to such product.

(c) DEFINITIONS.—(1) As used in this section, the term "duties and other import restrictions" includes (A) rate and form of import duties and classification of articles, and (B) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports.

(2) For purposes of this section—

(A) Except as provided in subsection (d) of this section, the terms "existing on July 1, 1934", "existing on January 1, 1945", "existing on January 1, 1955", and "existing on July 1, 1958" refer to rates of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on the date specified, except rates in effect by reason of action taken pursuant to section 1362 of this title.

(B) The term "existing" without the specification of any date, when used with respect to any matter relating to the conclusion of, or proclamation to carry out, a foreign trade agreement, means existing on the day on which that trade agreement is entered into.

(d) RATE BASIS FOR ADDITIONAL INCREASES OR DECREASES; RESTORATION OF TERMINATED TREATIES FORBIDDEN.—(1) When any rate of duty has been increased or decreased for the duration of war or an

emergency, by agreement or otherwise, any further increase or decrease shall be computed upon the basis of the post-war or post-emergency rate carried in such agreement or otherwise.

(2) Where under a foreign trade agreement the United States has reserved the unqualified right to withdraw or modify, after the termination of war or an emergency, a rate on a specific commodity, the rate on such commodity to be considered as "existing on January 1, 1945" for the purpose of this section shall be the rate which would have existed if the agreement had not been entered into.

(3) No proclamation shall be made pursuant to this section for the purpose of carrying out any foreign trade agreement the proclamation with respect to which has been terminated in whole by the President prior to July 5, 1945.

(e)[38] * * *

(f) INFORMATION AND ADVICE FROM INDUSTRY, AGRICULTURE, AND LABOR.—It is declared to be the sense of the Congress that the President, during the course of negotiating any foreign trade agreement under this section, should seek information and advice with respect to such agreement from representatives of industry, agriculture, and labor.

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Sec. 516A.[39] Judicial Review in Countervailing Duty and Antidumping Duty Proceedings.

(a) REVIEW OF DETERMINATION.—

(1)[40] REVIEW OF CERTAIN DETERMINATIONS.—

(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

(ii) a determination by the administering authority, or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

(iii) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) TEN-DAY REVIEW.—Within 10 says after the date of publication in the Federal Register of notice of—

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[38] Subsec. (e) was repealed by sec. 257(b) of Public Law 87-794 (76 Stat. 882).

[39] Sec. 516A was added by sec. 1001 of Public Law 96-39 (Trade Agreements Act of 1979; 93 Stat. 300).

[40] Par. (1) was amended and restated by sec. 608(a) of Public Law 96-417 (94 Stat. 1745).

(i) a determination by the administering authority, under section 703(c) or 733(b) of this Act, that a case is extraordinarily complicated, or

(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after the date of publication in the Federal Register of—

(i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade[41] by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the Secretary and by the Commission under section 303, or by the administering authority and by the Commission under section 705 or 735 of this Act.

(ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 303, 705, or 735 of this Act.

(iii) A determination, other than a determination reviewable under paragraph (1), by the Secretary, the administering authority, or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under sections 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

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[41] This reference to the Court of International Trade was substituted in lieu of a reference to the Customs Court by sec. 601(7) of Public Law 96–417 (94 Stat. 1744).

(3) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code,[42] apply to an action under this section.

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under paragraph (1) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

(A) IN GENERAL.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3); and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade[41], or of the United States Court of Appeals for the Federal Circuit,[43] not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

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[42] The reference to ch. 169 was substituted in lieu of a reference to sec. 2632 by sec. 608(b) of Public Law 96-417 (94 Stat. 1746). Sec. 2 of Public Law 96-542 (94 Stat. 3215) further struck out a reference to subsecs. (b), (c), and (e) of ch. 169.

[43] Reference to the United States Court of Appeals for the Federal Circuit was substituted in lieu of a reference to the United States Court of Customs and Patent Appeals by sec. 163(a)(2) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49).

(2) INJUNCTIVE RELIEF.—In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States Court of International Trade[41] may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.[44]

(3) REMAND FOR FINAL DISPOSITION.—If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) STANDING.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Court of International Trade.[41] The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.[45]

(e) LIQUIDATION IN ACCORDANCE WITH FINAL DECISION.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade[41] or of the United States Court of Appeals for the Federal Circuit—[43]

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2),

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) DEFINITIONS.—For purposes of this section—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the administering authority described in section 771(1) of this Act.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) INTERESTED PARTY.—The term "interested party" means any person described in section 771(9) of this Act.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

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[44] The last sentence in par. (2) was struck out by sec. 604(c) of Public Law 96–417 (94 Stat. 1746). The former text concerned factors which the court should consider in ruling on a request for injunctive relief.

[45] This sentence was amended and restated by sec. 604(d) of Public Law 96–417 (94 Stat. 1746).

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES[46]

SUBTITLE A—IMPOSITION OF COUNTERVAILING DUTIES

Sec. 701. Countervailing Duties Imposed.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy.

(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term "country under the Agreement" means a country—

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979.

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) Nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) CROSS REFERENCE.—

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[46] 19 U.S.C. 1671–1677g. Title VII was added by sec. 101 of Public Law 96–39 (Trade Agreements Act of 1979; 93 Stat. 150).

For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

Sec. 702. Procedures of Initiating a Countervailing Duty Investigation.

(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.[47]

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations.

(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to

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[47] However, see sec. 102 of the Trade Agreements Act of 1979 (page 84) concerning investigations in progress under sec. 303 of this act at the time of enactment of this section.

prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

Sec. 703. Preliminary Determinations.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 702(b) or on which it receives notice from the administering authority of an investigation commenced under section 702(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded.

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—Within 85 days after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 150th day after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register.

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated en-

tries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

Sec. 704. Termination or Suspension of Investigation.

(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A SUBSIDY OR TO CEASE EXPORTS OF SUBSIDIZED MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of the exports to the United States of the merchandise which is the subject of the investigation.

(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the merchandise which is the subject of the investigation into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net subsidy will be offset.

(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign gov-

ernment under this subsection to restrict the volume of imports of merchandise which is the subject of an investigation into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of alleged subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authorities shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation.

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of

how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET SUBSIDY.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 703(d)(1).

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 703(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), or (E) of section 771(9) which is a party to the investigation, then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), or (E) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under para-

graph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption.

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph.

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended, and

(D) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

Sec. 705. Final Determinations.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of its preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise.

(2) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) there is material injury which will be difficult to repair, and

(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, the—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is

based, and it shall publish notice of its determination in the Federal Register.

Sec. 706. Assessment of Duty.

(a) PUBLICATION OF COUNTERVAILING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on the merchandise are deposited.

(b) IMPOSITION OF DUTIES.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(1), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(1), shall be subject to the imposition of countervailing duties under section 701(a).

(2) SPECIAL RULE.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

Sec. 707. Treatment of Difference Between Deposit of Estimated Countervailing Duty and Final Assessed Duty Under Countervailing Duty Order.

(a) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 703(d)(2).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(2) is different from the amount

of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) collected, to the extent that the deposit under section 706(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 706(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SUBTITLE B—IMPOSITION OF ANTIDUMPING DUTIES [48]

Sec. 731. Antidumping Duties Imposed.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise.

Sec. 732. Procedures for Initiating an Antidumping Duty Investigation.

(a) INITIATION BY ADMINISTERING AUTHORITY.—An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the

[48] Subtitle B, as added by Public Law 96-39, basically replaces the Antidumping Act, 1921, which was repealed by Public Law 96-39.

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elements necessary for the imposition of a duty under section 731 exist.[49]

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations.

(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

Sec. 733. Preliminary Determinations.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within 45

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[49] However, see sec. 102 of the Trade Agreements Act of 1979 (page 84) concerning status of investigations in progress under the Antidumping Act, 1921 at the time of enactment of title VII of this act (Antidumping Act, 1921 repealed by Trade Agreements Act of 1979).

days after the date on which a petition is filed under section 732(b) or on which it receives notice from the administering authority of an investigation commenced under section 732(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—Within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a pre-

liminary determination shall be made within 90 days after the commencement of the investigation on the basis of the record established during the first 60 days after the investigation was commenced.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered.

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 210th day after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register.

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with

the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

Sec. 734. Termination or Suspension of Investigation.

(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority of the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the adminstering authority under section 733(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORT OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the United States price of that merchandise.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFORTS.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b)(1) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by the agreement exported to the United States during the period provided for cessation of exports does not exceed the quantity of such merchandise export-

ed to the United States during the most recent representative period determined by the administering authority.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation.

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation.

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 733(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(2).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the merchandise

subject to the investigation shall be suspended under section 733(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph (C), (D), or (E) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), or (E) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determina-

tion as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733(d)(1) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended, and

(D) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject to the investigation without regard to the effect of any agreement under subsection (b) or (c).

Sec. 735. Final Determinations.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) GENERAL RULE.—Within 75 days after the date of its preliminary determination under section 733(b), the administering authority shall make a final determination of whether the merchandise which was the subject of the investigation is being, or is likely to be, sold in the United States at less than its fair value.

(2) EXTENSION OF PERIOD FOR DETERMINATION.—The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733(b) if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was negative.

(3) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

Sec. 736. Assessment of Duty.

(a) PUBLICATION OF ANTIDUMPING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation of the United States, 12 months after the end of the annual accounting period of the manufacturer or ex-

porter within which it is sold in the United States to a person who is not the exporter of that merchandise.

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTY.—

(1) GENERAL RULE.—If the Commission in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(1) would have led to a finding of material injury, then entries of the merchandise subject to the antidumping duty order, the liquidation of which has been suspended under section 733(d)(1), shall be subject to the imposition of antidumping duties under section 731.

(2) SPECIAL RULE.—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a), the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(A) an affirmative preliminary determination by the administering authority under section 733(b), or

(B) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b).

(2) NOTICE; HEARING.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the foregin market value and the United States price of the merchandise.

(3) DETERMINATIONS TO BE BASIS OF ANTIDUMPING DUTY.—The administering authority shall publish notice in the Federal Register of the results of its determination of foreign market value and the United States price, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

Sec. 737. Treatment of Difference Between Deposit of Estimated Antidumping Duty and Final Assessed Duty Under Antidumping Duty Order.

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733(d)(2).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733(d)(2) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778.

Sec. 738. Conditional Payment of Antidumping Duty.

(a) GENERAL RULE.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping

duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the United States price of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the exporter's sales price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

Sec. 739. Duties of Customs Officers.

In the case of all imported merchandise of a class or kind as to which the administering authority has published an antidumping duty order under section 736 under which entries have not been liquidated, the appropriate customs officer shall, by all reasonable ways and means and consistently with the provisions of this title, ascertain and determine, or estimate, the foreign market value, the United States price, and any other information which the administering authority deems necessary for the purposes of administering this title.

Sec. 740. Antidumping Duty Treated as Regular Duty for Drawback Purposes.

The antidumping duty imposed by section 731 shall be treated in all respects as a normal custom duty for the purpose of any law relating to the drawback of customs duties.

SUBTITLE C—REVIEW OF DETERMINATIONS

Sec. 751. Administrative Review of Determinations.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a contervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a

finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement.

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

(b) REVIEWS UPON INFORMATION OR REQUEST.—

(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 704 or 734 or an affirmative determination made under section 704(h)(2); 705(a), 705(b), 734(h)(2), 735(a), or 735(b), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise.

(2) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

(A) the Commission may not review a determination under section 705(b) or 735(b), and

(B) the administering authority may not review a determination under section 705(a) or 735(a), or the suspension of an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) REVOCATION OF COUNTERVAILING DUTY ORDER OR ANTIDUMPING DUTY ORDER.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

(d) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of any interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(e) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under the last sentence of subsection (b)(1) is negative, the agreement shall be treated as not accepted, beginning on the date of the publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the agreement has been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

SUBTITLE D—GENERAL PROVISIONS

Sec. 771. Definitions; Special Rules.

For purpose of this title—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) COUNTRY.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

(B) RELATED PARTIES.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

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(C) REGIONAL INDUSTRIES.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(D) PRODUCT LINES.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which include a like product, for which the necessary information can be provided.

(5) SUBSIDY.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

(6) NET SUBSIDY.—For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under section 703(a), 705(b), 733(a), and 735(b), the Commission shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products.

(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(8) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; AGREEMENT.—The terms "Agreement on Subsidies and Countervailing Measures" and "Agreement" mean the Agreement on Interpretation and Application of Articles VI, XVI, XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2(a) of the Trade Agreements Act of 1979.

(9) INTERESTED PARTY.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, and

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(10) LIKE PRODUCT.—The term "like product" means a product which is like, or in the absence of like, most similar in

characteristics and uses with, the article subject to an investigation under this title.

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States.

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) ATTRIBUTION OF MERCHANDISE TO COUNTRY OF MANUFACTURE OR PRODUCTION.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) EXPORTER.—For the purpose of determining United States price, the term "exporter" includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;

(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

(14) SOLD OR, IN THE ABSENCE OF SALES, OFFERED FOR SALE.—The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefore in calculating the price at which the merchandise is sold or offered for sale.

(15) ORDINARY COURSE OF TRADE.—The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

(16) SUCH OR SIMILAR MERCHANDISE.—The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) USUAL WHOLESALE QUANTITIES.—The term "usual wholesale quantities", in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

Sec. 772. United States Price.

(a) UNITED STATES PRICE.—For purposes of this title, the term "United States price" means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(b) PURCHASE PRICE.—For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) shall be made if they are not reflected

in the price paid by the person by whom, or for whose account, the merchandise is imported.

(c) EXPORTER'S SALES PRICE.—For purposes of this section, the term "exporters sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

(d) ADJUSTMENTS TO PURCHASE PRICE AND EXPORTER'S SALES PRICE.—The purchase price and the exporter's sales price shall be adjusted by being—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exploration which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;

(C) the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 771(6)(C).

(e) ADDITIONAL ADJUSTMENTS TO EXPORTER'S SALES PRICE.—For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—

(1) commissions for selling in the United States the particular merchandise under consideration,

(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation

of the merchandise and before its sale to a person who is not the exporter of the merchandise.

Sec. 773. Foreign Market Value.

(a) DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—For purposes of this title—

(1) IN GENERAL.—The foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale of offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(2) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(3) INDIRECT SALES AND OFFERS FOR SALE.—If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13), the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(4) OTHER ADJUSTMENTS.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

(B) other differences in circumstances of sale; or

(C) the fact that merchandise described in paragraph (B) or (C) of section 771(16) is used in determining foreign market value,

then due allowance shall be made therefor.

(b) SALES AT LESS THAN COST OF PRODUCTION.—Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time and in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

(2) STATE-CONTROLLED ECONOMIES.—If available information indicates to the administering authority that the economy of the country from which the merchandise is exported is State-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the administering authority shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

(1) the prices, determined in accordance with subsection (a) of this section, at which such or similar merchandise of a non-State-controlled-economy country or countries is sold either—

(A) for consumption in the home market of that country or countries, or

(B) to other countries, including the United States; or

(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under subsection (e).

(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are non-existent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to its satisfaction. For the purposes of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

(e) CONSTRUCTED VALUE.—

(1) DETERMINATION.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that—

(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(2) TRANSACTIONS DISREGARDED; BEST EVIDENCE.—For the purposes of this subsection, a transaction directly or indirectly between persons specified in any one of the subparagraphs in paragraph (3) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (3) of this section.

(3) RELATED PARTIES.—The persons referred to in paragraph (2) of this subsection are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(f) AUTHORITY TO USE SAMPLING TECHNIQUES AND TO DISREGARD INSIGNIFICANT ADJUSTMENTS.—For the purpose of determining foreign market value under this section, the administering authority may—

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

Sec. 774. Hearings.

(a) INVESTIGATION HEARINGS.—The administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.

(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

Sec. 775. Subsidy Practices Discovered During an Investigation.

If, in the course of an investigation under this title, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) shall include the practice in the investigation if it appears to be a subsidy with respect to the merchandise which is the subject of the investigation, or

(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 777(a)(1), if the practice appears to be a subsidy with respect to any other merchandise.

Sec. 776. Verification of Information.

(a) GENERAL RULE.—Except with respect to information the verification of which is waived under section 733(b)(2), the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.

(b) DETERMINATIONS TO BE MADE ON BEST INFORMATION AVAILABLE.—In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

Sec. 777. Access to Information.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of ex parte meetings between—

(A) interested parties or other persons providing factual information in connection with an investigation, and

(B) the person charged with making the determination, and any person charged with making a final recommendation to that person, in connection with that investigation.

The record of the ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NONCONFIDENTIAL SUBMISSIONS.—The administering authority and the Commission may disclose—

(A) any confidential information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as confidential by the person submitting it.

(b) CONFIDENTIAL INFORMATION.—

(1) CONFIDENTIALITY MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it. The administering authority and the Commission may require that information for which confidential treatment is requested be accompanied by a non-confidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention.

(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as confidential is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application, which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

Sec. 778. Interest on Certain Overpayments and Underpayments.

(a) GENERAL RULE.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouses, for consumption on and after the date on which notice of an affirmative determination by the Com-

mission under section 705(b) or 735(b) with respect to such merchandise is published.

(b) RATE.—The rate at which such interest is payable shall be 8 percent per annum, or, if higher, the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of the duty is finally determined.

e. Export Trading Company Act of 1982

Public Law 97-290 [S. 734], 96 Stat. 1233, approved October 8, 1982

AN ACT To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS [1]

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 102. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire

[1] 15 U.S.C. 4001–4003.

expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 103. (a) For purposes of this title—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

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(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this title.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 104. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201. This title may be cited as the "Bank Export Services Act".

SEC. 202.[2] The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956, the Board of

[2] 12 U.S.C. 1843 note.

Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 203. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassem-

bling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of other evidences of ownership in one or more export trading companies.

"(F) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

"(ii) the term 'export trade services' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with

other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

SEC. 205.[2] On or before two years after the date of the enactment of this Act, the Federal Reserve Board shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives the Board's recommendations with respect to the implementation of this section, the Board's recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and the Board's recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 206.[3] The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

BANKERS' ACCEPTANCES

SEC. 207. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under sec-

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[2] 12 U.S.C. 635a–4.

tion 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution

shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW [4]

EXPORT TRADE PROMOTION DUTIES OF SECRETARY OF COMMERCE

SEC. 301. To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302.[5] (a) To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 310.

(b)(1) Within ten days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

ISSUANCE OF CERTIFICATE

SEC. 303.[5] (a) A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

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[4] 15 U.S.C. 4011–4021.

[5] Secs. 302 and 303 will not become effective until 90 days after the effective date of the rules and regulations first promulgated under sec. 310.

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 302(b)(1).

(d)(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

(e) If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE; REVOCATION OF CERTIFICATE

SEC. 304. (a)(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b)(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 303(a), the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 303(a), or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 303(a).

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 3 of the Antitrust Civil Process Act, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 305. (a) If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 304(b), any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this title shall be subject to judicial review.

(c) If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 306. (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.

(b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 303(a).

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

GUIDELINES

SEC. 307. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 303 and 304, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ANNUAL REPORTS

SEC. 308. Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 302(a).

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 310 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

RULES AND REGULATIONS

SEC. 310. The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

DEFINITIONS

SEC. 311. As used in this title—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the

course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

EFFECTIVE DATES

SEC. 312. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

SHORT TITLE

SEC. 401. This title may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

SEC. 402. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"SEC. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 403. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

"(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.".

f. Executive Order 11888, November 24, 1975, 40 F.R. 55276 [1]

Implementing the Generalized System of Preferences

The Trade Act of 1974 authorizes the establishment of a Generalized System of Preferences for eligible articles imported from beneficiary developing countries.

The President has designated and may, by Executive order, designate certain countries as beneficiary developing countries, after having determined that such designations are in accordance with the provisions of the Trade Act of 1974 and after having provided the necessary information to the Congress, pursuant to Section 502 of the Trade Act of 1974. The necessary determinations have been made and the appropriate information has been furnished the Congress.

The President may, by Executive order, designate articles eligible for duty-free treatment after receiving advice from appropriate agencies, public comment, and the advice of the International Trade Commission. That advice has been received, as requested, by reference to item numbers, and statistical divisions thereof, contained in the Tariff Schedules of the United States, hereinafter sometimes referred to as TSUS.

Since not every article within the group represented by an item number of the Tariff Schedules of the United States is eligible for duty-free treatment under a Generalized System of Preferences, it is necessary to subdivide some of the existing item numbers.

In order to implement the Generalized System of Preferences and to remove expired provisions of the TSUS, relating to the Philippine Republic and the Trust territory of the Pacific Islands, it is necessary to amend the Tariff Schedules of the United States, thus embodying the substance of relevant provisions of the Trade Act of 1974, and of actions taken thereunder, into the Tariff Schedules of the United States.

Now, Therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. 2461 *et seq.*, 88 Stat. 2073, 19 U.S.C. 2483), and as President of the United States of America, in order to designate additional beneficiary developing countries and eligible articles, and to

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[1] Supersedes Executive Order 11844, Mar. 24, 1975, 40 F.R. 13295. Annex I mentioned in this Executive order may be found in 40 F.R. 55284. Further amendments to annex I may be found in 44 F.R. 37086, Executive Order 12041, Feb. 25, 1978, 43 F.R. 8099, Executive Order 12124, Feb. 28, 1979, 44 F.R. 11729, 45 F.R. 20740, Executive Order 12204, Mar. 27, 1980, 47 F.R. 13477, Executive Order 12354, March 30, 1982, and 47 F.R. 30449, Executive Order 12371, July 12, 1982. Annexes II and III, as amended, were comprehensively amended and restated by Executive Order 12354, March 30, 1982, 47 F.R. 13477. These Annexes were further amended by Executive Order 12371, July 12, 1982, 47 F.R. 30449 and by Executive Order 12389, Oct. 25, 1982, 47 F.R. 47529. For the effective date of amendments made by these Executive orders, see the appropriate F.R. citations.

implement a Generalized System of Preferences, it is hereby ordered as follows:

Section 1. The following expired headnotes and items for the products of the Philippine Republic and of the Trust Territory of the Pacific Islands are deleted from the Tariff Schedules of the United States:

Headnotes:

General headnote 3(c);
Headnotes 3 and 4, part 13, schedule 1;
Headnotes 1, 2, and 3, part 14, schedule 1;
Headnote 2, subpart B, part 14, schedule 1;
Headnote 2, part 2, schedule 3; and
Headnote 3, subpart A, part 7, schedule 7.

TSUS items:

170.22	170.37	170.68	176.07
170.23	170.42	170.70	176.08
170.24	170.43	170.74	176.09
170.26	170.44	170.75	176.10
170.27	170.47	170.76	176.11
170.29	170.48	175.10	176.12
170.31	170.49	175.11	176.13
170.33	170.62	175.12	745.21
170.34	170.63	176.05	745.22
170.36	170.64	176.06	

Sec. 2. The article descriptions, including superior headings, for TSUS items 175.09 and 176.04 are amended to read, respectively, "Copra" and "Coconut Oil".

Sec. 3. A column entitled "GSP" is added to the left of, and adjacent to, the column entitled "Item" on each page of schedules 1 through 7 of the TSUS. The designations "A" or "A*", as specified in general headnote 3(c)(ii) of the TSUS, as added by Section 9 of this Order, shall be placed in the column entitled "GSP" opposite the TSUS item number of each article which has been designated as an eligible article for purposes of the Generalized System of Preferences.

Sec. 4. In order to subdivide existing items for purposes of the Generalized System of Preferences, the Tariff Schedules of the United States are amended as provided in Annex I, attached hereto and made a part hereof.

Sec. 5. The articles, identified by item numbers of the Tariff Schedules of the United States, as modified by this Order, set forth in Annex II and Annex III,[2] attached hereto and made a part hereof, are designated, pursuant to Section 503 of the Trade Act of 1974 (88 Stat. 2069, 19 U.S.C. 2463), as eligible articles for purposes of the Generalized System of Preferences, and shall be given duty-free treatment as set forth in General Headnote 3(c) of the TSUS, as added by Section 9 of this Order.

Sec. 6. The designation "A" shall be inserted in the column entitled "GSP" of the TSUS, As modified by this Order, opposite the TSUS item numbers set forth in Annex II of this Order.

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[2] See footnote 1 for citations to Annexes II and III in the Federal Register.

Sec. 7. The designation "A*" shall be inserted in the column entitled "GSP" of the TSUS, As modified by this Order, opposite the TSUS item numbers set forth in Annex III of this Order.

Sec. 8. The countries set forth in General Headnote 3(c)(i) of the TSUS, as added by Section 9 of this Order, are hereby designated as beneficiary developing countries.

Sec. 9. A new General Headnote 3(c) of the TSUS is hereby added as follows:

"(c) Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences (GSP):

"(i)[3] The following countries, territories, and associations of countries eligible for treatment as one country (pursuant to section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3))) are designated beneficiary developing countries for the purpose of the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*):

"(a) Independent Countries

Angola
Antigua and Barbuda
Argentina
Bahamas
Bahrain
Bangladesh
Barbados
Belize
Benin
Bhutan
Bolivia
Botswana
Brazil
Burma
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo (Brazzaville)
Costa Rica
Cyprus
Djibouti
Dominican Republic
Dominica
Ecuador
Egypt
El Salvador
Equatorial Guinea
Fiji
Gambia
Ghana
Grenada
Guatemala
Guinea
Guinea Bissau
Guyana
Haiti
Honduras
India
Indonesia
Israel
Ivory Coast
Jamaica
Jordan
Kenya
Kiribati
Korea, Republic of
Lebanon
Lesotho
Liberia
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Morocco
Mozambique
Nauru
Nepal
Nicaragua
Niger
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Portugal
Romania
Rwanda
Saint Christopher-Nevis
Saint Lucia
Saint Vincent and the Grenadines

[3] General headnote 3(c)(i) of the TSUS was amended by sec. 5 of Executive Order 11934, Aug. 30, 1976, 41 F.R. 37084. Further amended by sec. 5 of Executive Order 12124, Feb. 28, 1979, 44 F.R. 11729, Executive Order 12180, Dec. 11, 1979, 44 F.R. 72077, Executive Order 12204, Mar. 27, 1980, 45 F.R. 20740, sec. 6 of Executive Order 12302, Apr. 1, 1981, 46 F.R. 19901, and by sec. 6 of Executive Order 12354, March 30, 1982, 47 F.R. 13477.

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Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
Somalia
Sri Lanka
Sudan
Surinam
Swaziland
Syria
Taiwan
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
Uganda
Upper Volta
Uruguay
Vanuaru
Venezuela
Western Samoa
Yemen (Sana)
Yugoslavia
Zaire
Zambia
Zimbabwe

"(b) Non-Independent Countries and Territories

Anguilla
Bermuda
British Indian Ocean Territory
Brunei
Cayman Islands
Christmas Island (Australia)
Cocos (Keeling) Islands
Cook Islands
Falkland Islands (Islas Malvinas)
French Polynesia
Gibraltar
Heard Island and McDonald Islands
Hong Kong
Macau
Montserrat
Netherlands Antilles
New Caledonia
Niue
Norfolk Island
Pitcairn Island
Saint Helena
Tokelau
Trust Territory of the Pacific Islands
Turks and Caicos Islands
Virgin Islands, British
Wallis and Futuna
Western Sahara

"Associations of Countries (treated as one country)

Member countries of the Cartagena Agreement (Andean Group)

Consisting of:
Bolivia
Colombia
Ecuador
Peru
Venezuela

Association of South East Asian Nations (ASEAN)

Consisting of:
Indonesia
Malaysia
Philippines
Singapore
Thailand

Member Countries of the Caribbean Common Market (CARICOM)

Consisting of:
Antigua and Barbuda
Barbados
Belize
Dominica
Grenada
Guyana
Jamaica
Montserrat
Saint Christopher-Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago

"(ii) Articles for which the designations "A" or "A*" appear in the column entitled "GSP" of the schedules are those designated by the President to be eligible articles for purposes of the GSP pursuant to Section 503 of the Trade Act. The designation "A" signifies that all beneficiary developing countries are eligible for preferential treatment with respect to all articles provided for in the designated TSUS item, while the designation "A*" indicates that certain beneficiary developing countries, specifically enumerated in subdivision (c)(iii) of this headnote, are not eligible for such preferential treatment with regard to any article provided for in the designated TSUS item. Whenever an eligible article is imported into the customs territory of the United States directly from a country or territory listed in subdivision (c)(i) of this headnote, it shall receive duty-free treatment, unless excluded from such treatment by subdivision (c)(iii) of this headnote, provided that, in accordance with regulations promulgated by the Secretary of the Treasury:

"(A) The sum of (1) the cost or value of the materials produced in the beneficiary developing country, plus (2) the direct costs of processing operations performed in such country is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States; or

"(B) The sum of (1) the cost or value of the material produced in two or more beneficiary developing countries which are members of the same association of countries which is treated as one country under Section 502(a)(3) of the Trade Act, plus (2) the direct cost of processing operations performed in such countries is not less than 50 percent of the appraised value of such article at the time of its entry into the customs territory of the United States;

and provided further that, for the purpose of (A) above, the term "country" does not include an association of countries which is treated as one country under Section 502(a)(3) of the Trade Act, but does include a country which is a member of any such association.

"(iii) [4] The following designated eligible articles provided for in TSUS item numbers preceded by the designation "A*", if imported from a beneficiary developing country set opposite the TSUS item numbers listed below, are not entitled to the duty-free treatment provided for in subdivision (c)(ii) of this headnote:

107.48	Brazil
107.80	Argentina
112.21	Peru
113.01	Thailand
114.04	Thailand
114.06	Republic of Korea
121.35	India
121.55	India
121.61	Argentina
130.37	Argentina
135.51	Mexico
135.90	Mexico
135.95	Mexico
136.00	Dominican Republic
136.20	Mexico
136.22	Mexico
136.30	Mexico
136.80	Mexico
137.10	Mexico
137.40	Mexico
137.50	Mexico
137.63	Mexico
137.71	Mexico
137.75	Costa Rica
137.79	Mexico
138.05	Mexico
138.35	Costa Rica
140.11	Chile
140.14	Thailand
140.21	Mexico
141.77	Mexico
145.09	Dominican Republic
146.22	Turkey
146.44	Philippines
146.76	Mexico
148.03	Mexico
148.12	Mexico
148.17	Mexico
148.25	Mexico
148.30	Mexico
148.72	Chile
149.50	Mexico
155.20	Argentina Brazil Colombia Dominican Republic Guatemala Panama Philippines Swaziland Thailand
155.35	Barbados
168.98	Mexico
169.46	Mexico
182.90	Panama
192.21	Colombia
192.85	Mexico
200.91	Honduras
202.62	Mexico
206.47	Taiwan
206.60	Mexico
206.98	Taiwan
220.20	Portugal
220.25	Portugal
220.48	Portugal
222.10	Hong Kong
222.50	Taiwan
240.19	Taiwan
240.21	Philippines
245.20	Brazil
245.30	Brazil
256.60	Republic of Korea

[4] General headnote 3(c)(iii), as added by this Executive order, was amended by sec. 1 of Executive Order 11906, Feb. 27, 1976, 41 F.R. 8758. Further amended by Executive Order 11934, Aug. 30, 1976, 41 F.R. 37084. Executive Order 11960, Jan. 19, 1977. 42 F.R. 4317, Executive Order 11974, Feb. 25, 1977, 42 F.R. 11230A. Executive Order 12032. Dec. 27, 1977, 42 F.R. 64853, Executive Order 12941, Feb. 25, 1978, 43 F.R. 8099, Executive Order 12124, Feb. 28, 1979, 44 F.R. 11729, Executive Order 12180, Dec. 11, 1979, 44 F.R. 72077, Executive Order 12181, Dec. 11, 1979, 44 F.R. 72083, Executive Order 12204, Mar. 27, 1980, 45 F.R. 20740, Executive Order 12222, June 28, 1980, 45 F.R. 45233, Executive Order 12267, Jan. 15, 1981, 46 FR 4669, Executive Order 12302, Apr. 1, 1981, 46 F.R. 19901, Executive Order 12311, June 29, 1981, 46 F.R. 34305, and Executive Order 12354, March 30, 1982, 47 F.R. 13477, and by Executive Order 12389, Oct. 25, 1982, 47 F.R. 47529.

256.87 Mexico
305.28 Thailand
315.25 Mexico
315.80 Thailand
319.01 India
319.03 India
319.05 India
337.40 Hong Kong, Republic of Korea
355.81 Taiwan
356.25 Israel
360.35 India
365.84 Philippines
386.13 Taiwan
389.61 Hong Kong, Taiwan
402.12 Brazil
406.20 Israel
406.96 Republic of Korea
407.09 Argentina
413.20 Mexico
413.24 Republic of Korea
417.22 Mexico
418.80 Argentina
425.84 Netherlands Antilles
428.30 Brazil
428.86 Brazil
437.60 Argentina
437.64 Brazil
445.42 Taiwan
452.44 Brazil
473.52 Mexico
473.56 Mexico
522.21 Mexico
522.61 Brazil
532.22 Republic of Korea
532.31 Mexico
534.94 Taiwan
535.31 Mexico
545.53 Mexico
545.65 Mexico
603.40 Chile
612.06 Chile, Peru, Zambia
618.02 Ghana
618.15 Venezuela
632.02 Bolivia
642.14 Republic of Korea
642.16 Republic of Korea
642.17 Republic of Korea
646.32 Republic of Korea
648.97 Taiwan
650.89 Hong Kong, Taiwan
651.21 Taiwan
651.33 Hong Kong
651.37 Taiwan
651.46 Republic of Korea, Taiwan
651.49 Taiwan
651.53 Taiwan
652.60 Taiwan
652.84 Mexico
653.48 Taiwan
653.85 Taiwan
653.93 Taiwan
653.94 Republic of Korea
653.99 Taiwan
654.07 Taiwan
654.12 Taiwan
654.13 Hong Kong
657.24 Taiwan
660.42 Brazil
660.48 Mexico
661.06 Hong Kong, Taiwan
661.09 Singapore
662.35 Mexico
672.16 Taiwan
674.35 Taiwan
676.20 Taiwan
676.52 Hong Kong, Mexico
678.50 Hong Kong, Republic of Korea, Taiwan
682.35 Mexico
682.60 Hong Kong, Mexico
683.05 Taiwan
683.15 Mexico
683.70 Hong Kong, Taiwan
683.80 Hong Kong
684.10 Taiwan
684.15 Singapore
684.48 Hong Kong
684.53 Hong Kong, Taiwan
684.55 Hong Kong
684.70 Republic of Korea, Taiwan, Hong Kong
685.24 Republic of Korea, Singapore, Taiwan
685.40 Taiwan
685.90 Mexico
686.30 Taiwan
687.30 Malaysia
688.10 Taiwan
688.12 Mexico
688.15 Mexico
688.45 Hong Kong
692.32 Brazil, Mexico
696.10 Taiwan
696.35 Taiwan
702.32 Mexico
703.47 Mexico
703.55 Portugal
706.39 Hong Kong, Republic of Korea, Taiwan
706.44 Hong Kong
706.61 Hong Kong, Taiwan
708.47 Hong Kong
709.15 Israel
709.40 Hong Kong
713.15 Mexico
713.17 Taiwan
725.32 Taiwan

727.06	Mexico
727.11	Hong Kong
727.12	Philippines
727.23	Taiwan
727.35	Taiwan
727.55	Taiwan
730.91	Mexico
731.30	Taiwan
734.10	Taiwan
734.15	Taiwan, Hong Kong
734.20	Taiwan
734.25	Hong Kong
734.34	Hong Kong
734.40	Taiwan
734.51	Taiwan
734.56	Haiti
734.70	Republic of Korea
734.85	Republic of Korea
734.86	Taiwan
734.87	Taiwan
734.90	Taiwan
735.09	Taiwan
735.12	Taiwan
735.20	Taiwan
737.07	Hong Kong
737.15	Hong Kong
737.21	Hong Kong
737.23	Taiwan
737.30	Republic of Korea
737.50	Hong Kong
737.60	Hong Kong
737.80	Hong Kong
737.95	Hong Kong, Taiwan
740.11	Hong Kong, Israel
740.12	Hong Kong
740.13	Hong Kong
740.14	Hong Kong
740.15	Hong Kong
740.30	Hong Kong
740.34	Hong Kong
741.25	Hong Kong
750.25	Hong Kong
750.35	Taiwan
750.50	Republic of Korea
751.05	Taiwan
755.25	Hong Kong
771.43	Taiwan
771.45	Taiwan
772.03	Hong Kong
772.35	Taiwan
772.51	Republic of Korea
774.45	Hong Kong
790.03	Taiwan
790.39	Taiwan
790.62	Taiwan
790.70	Republic of Korea
792.50	Philippines
792.60	Hong Kong
792.75	Hong Kong

Sec. 10. The provisions of this Order shall be effective with respect to articles that are both (1) imported, and (2) (a) entered for consumption or (b) withdrawn from warehouse for consumption on or after the effective date of this Order.

Sec. 11. Executive Order No. 11844 of March 24, 1975, is superseded.

Sec. 12. This Order shall be effective on January 1, 1976.

g. Executive Order 11854, April 24, 1975, 40 F.R. 18391

Waiver Under the Trade Act of 1974 With Respect to the Socialist Republic of Romania

By virtue of the authority vested in me by Section 402(c)(1) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978, 2057), and having made the report to the Congress required by that provision, I hereby waive the application of subsections (a) and (b) of section 402 of said Act with respect to the Socialist Republic of Romania.[1]

[1] The President has extended this waiver on several occasions. The most recent extension occurred by Presidential message to Congress on June 2, 1982, valid for a period of 12 months.

h. Executive Order 12051, April 7, 1978, 43 F.R. 15131

Waiver Under the Trade Act of 1974 With Respect to the Hungarian People's Republic

By virtue of the authority vested in me as President of the United States of America by Section 402(c)(2) of the Trade Act of 1974 (88 Stat. 2057, 19 U.S.C. 2432(c)(2)), which continues to apply to the Hungarian People's Republic pursuant to Section 402(d), and having made the report to the Congress required by Section 402(c)(2), I waive the application of subsections (a) and (b) of Section 402 of said Act with respect to the Hungarian People's Republic.[1]

[1] The President has extended this waiver on several occasions. The most recent extension occurred by Presidential message to Congress on June 2, 1982, valid for a period of 12 months.

i. Executive Order 12167, October 23, 1979, 44 F.R. 61167

Waiver Under the Trade Act of 1974 With Respect to the People's Republic of China

By virtue of the authority vested in me as President of the United States of America by Section 402(c)(2) of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), which continues to apply to the People's Republic of China pursuant to Section 402(d), and having made the report to the Congress required by Section 402(c)(2), I waive the application of subsections (a) and (b) of Section 402 of said Act with respect to the People's Republic of China.[1]

[1] The President has extended this waiver on two occassions. The most recent extension occurred by Presidential message to Congress on June 2, 1982, valid for a period of 12 months. The President further determined in a memorandum for the United States Trade Representative of Dec. 23, 1982 (47 F.R. 57653) that a "satisfactory balance of concessions in trade services has been maintained during the life of the Agreement on Trade Relations" with the People's Republic of China and that "actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations have been satisfactorily reciprocated by the People's Republic of China."

j. Executive Order 11846, March 27, 1975, 40 F.R. 14291, as amended by Executive Order 11894, January 6, 1976, 41 F.R. 1041, Executive Order 11947, November 8, 1976, 41 F.R. 49799, Executive Order 12102, November 17, 1978, 43 F.R. 54197, Executive Order 12163, September 29, 1979, 44 F.R. 56673, and by Executive Order 12188, January 2, 1980, 45 F.R. 989

ADMINISTRATION OF THE TRADE AGREEMENTS PROGRAM

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Public Law 93-618, 88 Stat. 1978), the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), Section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and Section 301 of Title 3 of the United States Code, and as President of the United States it is hereby ordered as follows:

Section 1. The Trade Agreements Program. The "trade agreements program" includes all activities consisting of, or related to, the negotiation or administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution, Section 350 of the Tariff Act of 1930, as amended, the Trade Expansion Act of 1962, as amended, or the Act.

Sec. 2. The Special Representative for Trade Negotiations.

(a) The Special Representative for Trade Negotiations, hereinafter referred to as the Special Representative, in addition to the functions conferred upon him by the Act, including Section 141 thereof, and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) * * *[1] [Revoked—1980]

(c) The Special Representative shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by Section 163(a) of the Act. At the request of the Special Representative, other agencies shall assist in the preparation of that report.

(d) The Special Representative, except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative shall consult with the Trade Policy Committee in connection with the performance of his func-

[1] Subsec. (b), which stipulated that the Special Representative would be the chief representative of the United States for each negotiation under the trade agreements program, was revoked by Sec. 1-105(e) of Executive Order 12188. This responsibility is now vested in the United States Trade Representative.

tions, including those established or delegated by this Order, and shall, as appropriate, consult with other Federal agencies or bodies. With respect to the performance of his functions under Title IV of the Act, including those established or delegated by this Order, the Special Representative shall also consult with the East-West Foreign Trade Board.

(f) The Special Representative shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order No. 11030, as amended, except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative, and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

Sec. 3. The Trade Policy Committee. (a) * * *[2] [Revoked—1980]

(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended, upon the inter-agency organization referred to in Section 242 thereof, as amended, the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c)[3] The Special Representative or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under Section 242(b)(2) of the Trade Expansion Act of 1962, as amended, the Committee shall, through the Special Representative, request the advice of the Adjustment Assistance Coordinating Committee, established by Section 281 of the Act.

(e) * * *[4] [Revoked—1980]

(f) * * *[4] [Revoked—1980]

Sec. 4. Trade Negotiations Under Title I of the Act.

(a) The functions of the President under Section 102 of the Act concerning notice to, and consultation with, Congress, in connec-

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[2] Subsec. (a), which established the Trade Policy Committee and listed the members of the Committee, was revoked by sec. 1-105(e) of Executive Order 12188. See sec. 1-102 of Executive Order 12188 (page 227) for the current listing of Committee members and other pertinent information concerning the Committee.

[3] The first sentence of subsec. (c), which stated that the Committee's recommendations under sec. 242(b)(1) of the Trade Expansion Act of 1962 would guide the administration of the trade agreements program, was revoked by sec. 1-105(e) of Executive Order 12188.

[4] Subsec. (e) (directing the Committee to advise the President as to what action he should take regarding unfair practices in import trade) and (f) (abolishing the Trade Expansion Act Advisory Committee) were revoked by sec. 1-105(e) of Executive Order 12188.

tion with agreements on nontariff barriers to, and other distortions of, trade, are hereby delegated to the Special Representative.

(b) The Special Representative, after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under Section 131(c) of the Act with respect to advice of the International Trade Commission and under Section 132 of the Act with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative. The functions of the President under Section 133 of the Act with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative, who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under Section 135 of the Act with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I), except that of reporting annually to Congress, which are applicable to advisory committees under the Act are delegated to the Special Representative. In establishing and organizing general policy advisory committees or sector advisory committees under Section 135(c) of the Act, the Special Representative shall act through the Secretaries of Commerce, Labor and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to Sections 601 (3) and (4) of the Act are hereby delegated to the Special Representative. The International Trade Commission is requested to advise the Special Representative with respect to determining such ad valorem amounts and equivalents. The Special Representative shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under Section 131 of the Act, and other advice or reports by the International Trade Commission to the President or the Special Representative, the release or disclosure of which is not specifically authorized or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative.

Sec. 5. Import Relief and Market Disruption.

(a) The Special Representative is authorized to request from the International Trade Commission the information specified in Sections 202(d) and 203(i) (1) and (2) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under Section 203(g) of the Act, regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under Section 203(g) of the Act or 352(b) of the Trade Expansion Act of 1962, regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.

Sec. 6. Unfair Trade Practices. * * *[5] [Revoked—1980]

Sec. 7. East-West Foreign Trade Board.[6]

(a) In accordance with Section 411 of the Act, there is hereby established the East-West Foreign Trade Board, hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

(1) The Secretary of State.
(2) The Secretary of the Treasury.
(3) The Secretary of Defense.[7]
(4) The Secretary of Agriculture.
(5) The Secretary of Commerce.
(6) The Special Representative for Trade Negotiations.
(7) The Director of the Office of Management and Budget.
(8) The Chairman of the Council of Economic Advisors.[8]
(9) The President of the Export-Import Bank of the United States.

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by Section 411 of the Act and such other functions as the President may direct.

(c) The Board is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out its responsibilities under the Act and this Order.

(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with Sections 402 and 409 of the Act (dealing with freedom of emigration) and Section 403 (dealing with United States personnel missing in action in Southeast Asia), and shall prepare, for the President's transmission to Congress, the reports and other documents required by Sections 402 and 409 of the Act.

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[5] Sec. 6, relating to unfair trade practices, was revoked by sec. 1-105(e) of Executive Order 12188.

[6] The East-West Foreign Trade Board was abolished by sec. 6 of Reorganization Plan No. 3 of 1979 (International Trade).

[7] The Secretary of Defense was added to the list by Executive Order 11894, Jan. 6, 1976, 41 F.R. 1041.

[8] E.O. 12102 struck as members of the East-West Foreign Trade Board, the Executive Director of the Council on International Economic Policy and the Assistant to the President for Economic Affairs and added this new member.

(e) The President's Committee on East-West Trade Policy, established by Executive Order No. 11789 of June 25, 1974, as amended by Section 6(d) of Executive Order No. 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

Sec. 8. Generalized System of Preferences.

(a) The Special Representative, in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act.

(b) The Committee, through the Special Representative, shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

Sec. 9. Prior Executive Orders.

(a) Executive Order No. 11789 of June 25, 1974, and Section 6(d) of Executive Order No. 11808 of September 30, 1974, relating to the President's Committee on East-West Trade Policy are hereby revoked.

(b)(1) Sections 5(b), 7, and 8 of Executive Order No. 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order No. 11075, and Executive Order No. 11106 of April 18, 1963 and Executive Order No. 11113 of June 13, 1963, are hereby revoked.

k. Executive Order 12188, January 2, 1980, 45 F.R. 989, as amended by Executive Order 12292, February 23, 1981, 46 F.R. 13967

INTERNATIONAL TRADE FUNCTIONS

By the authority vested in me the Trade Agreements Act of 1979, the Trade Act of 1974, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, Reorganization Plan No. 3 of 1979, and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

Sec. 1-101. The United States Trade Representative.

(a) Except as may be otherwise expressly provided by law, the United States Trade Representative (hereinafter referred to as the "Trade Representative") shall be chief representative of the United States for:

(1) all activities of, or under the auspices of the General Agreement on Tariffs and Trade;

(2) discussions, meetings, and negotiations in the Organization for Economic Cooperation and Development when trade or commodity issues are the primary issues under consideration;

(3) negotiations in the United Nations Conference on Trade and Development and other multilateral institutions when trade or commodity issues are the primary issues under consideration;

(4) other bilateral or multilateral negotiations when trade, including East-West trade, or commodities is the primary issue under consideration;

(5) negotiations under sections 704 and 734 of the Tariff Act of 1930 (19 U.S.C. 1671c and 1673c); and

(6) negotiations concerning direct investment incentives and disincentives and bilateral investment issues concerning barriers to investment.

For purposes of this subsection, the term "negotiations" includes discussions and meetings with foreign governments and instrumentalities primarily concerning preparations for formal negotiations and policies regarding implementation of agreements resulting from such negotiations.

(b) The Trade Representative, in consultation with the Trade Negotiating Committee, shall invite such members of the Trade Negotiating Committee and representatives of other departments or agencies as may be appropriate to participate in the negotiations and other activities listed in subsection (a).

(c) The Trade Representative, in consultation with the Trade Negotiating Committee, may delegate to any member of the Trade Negotiating Committee, or to any other appropriate department or agency, primary responsibility for representing the United States in any of the negotiations and other activities set forth in subsection (a).

(d) The Trade Representative, or any department or agency to which responsibility for representing the United States in a negotiation or other activity has been delegated pursuant to subsection (c), shall consult with the Trade Policy Committee and with any affected regulatory agencies on the policy issues arising in connection with the negotiations and other activities listed in subsection (a).

Sec. 1-102. The Trade Policy Committee.[1]

(a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), the Trade Policy Committee (hereinafter referred to as the "Committee") is continued. The Committee shall have the functions specified by law or by the President, including those specified in section 1(b)(3) of Reorganization Plan No. 3 of 1979.

(b) The Committee shall be composed of the following:

(1) The Trade Representative, who shall be Chairman
(2) The Secretary of Commerce, who shall be Vice Chairman
(3) The Secretary of State
(4) The Secretary of the Treasury
(5) The Secretary of Defense
(6) The Attorney General
(7) The Secretary of the Interior
(8) The Secretary of Agriculture
(9) The Secretary of Labor
(10) The Secretary of Transportation
(11) The Secretary of Energy
(12) The Director of the Office of Management and Budget
(13) The Chairman of the Council of Economic Advisers
(14) The Assistant to the President for National Security Affairs
(15) The Director of the United States International Development Cooperation Agency.

The Chairman and any member of the Committee may designate a subordinate officer whose status is not below that of an Assistant Secretary to serve in his stead when he is unable to attend any meetings of the Committee. The Chairman may invite representatives from other agencies to attend the meetings of the Committee.

(c)(1) There is established, as a subcommittee of the Committee, a Trade Negotiating Committee which shall advise the Trade Representative on the management of negotiations referred to in section 1-101(a) of this order. The members of such subcommittee shall be the Trade Representative (Chair), the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.

(2) The Trade Representative, with the advice of the Committee, may create additional subcommittees thereof.

(d) In advising the President on international trade and related matters, the Trade Representative shall take into account and reflect the views of the members of the Committee and of other interested agencies.

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[1] For other material concerning the Trade Policy Committee, see the remaining text of sec. 3 of Executive Order 11846 (page 222).

Sec. 1-103. Delegation of Functions.

(a) The function vested in the President by section 412(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2542(b)) is delegated to the Secretary of Commerce with regard to the technical office established under section 412(a)(1) of such Act and to the Secretary of Agriculture with regard to the technical office established under section 412(a)(2) of such Act. In prescribing the functions of each technical office, the Secretary concerned shall consult with the Trade Representative and with all affected regulatory agencies. The functions delegated by this section shall be exercised in coordination with the Trade Representative.

(b) The functions of the President under sections 2(b) and 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b) and 2513) and section 701(b) of the Tariff Act of 1930 (19 U.S.C. 1871(b)) are delegated to the Trade Representative, who shall exercise such authority with the advice of the Trade Policy Committee.

Sec. 1-104. Authority Under the Foreign Service Act and Related Laws.

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to establish a Foreign Commercial Service in the Department of Commerce, and a category of career officers of the Foreign Commercial Service to be known as Foreign Commercial Officers. For purposes of the utilization by the Secretary of the authorities granted to the Secretary under this section, the terms "Foreign Service" and "Foreign Service Officer" shall be construed to mean "Foreign Commercial Service" and "Foreign Commercial Officer," respectively.

(b) * * * [Revoked—1981][2]

(c) The Board of the Foreign Service and the Board of Examiners for the Foreign Service established by Executive Order 11264 of December 31, 1965, as amended, shall exercise with respect to Foreign Service personnel of the Department of Commerce the functions delegated to them by that order with respect to Foreign Service personnel of the Department of State. The Boards shall perform such additional functions with respect to Foreign Service personnel of the Department of Commerce as the Secretary may from time to time delegate or otherwise assign, consistent with the functions of such boards.

Sec. 1-105. Prior Executive Orders and Determination.

(a) Section 1(b) of Executive Order 11269 of February 14, 1966, as amended by adding "the United States Trade Representative," after "the Secretary of State,".

(b)(1) Section 1 of Executive Order 11539 of June 30, 1970, is amended to read as follows:

"Section 1. The United States Trade Representative, with the concurrence of the Secretary of Agriculture and the Secretary of State, is authorized to negotiate bilateral agreements with representatives of governments of foreign countries limiting the export

[2] Sec. 1-104(b), which delegated functions under the Foreign Service Act of 1946 (such act repealed in 1980), was revoked by sec. 9(m) of Executive Order 12292.

from the respective countries and the importation into the United States of—

"(1) fresh, chilled, or frozen cattle meat,

"(2) fresh, chilled, or frozen meat of goats and sheep (except lambs), and

"(3) prepared and preserved beef and veal (except sausage) if articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved, that are the products of such countries.".

(2) Section 4 of such order is amended by striking out "the Secretary of State" and inserting in lieu thereof "the United States Trade Representative".

(c) The last sentence of section 1(a) of Executive Order 11651 of March 3, 1972, as amended, is amended to read as follows: "The United States Trade Representative, or his designee, also shall be a member of the Committee.".

(d) The first sentence of section 3 of Executive Order 11703 of February 7, 1973, is amended to read as follows: "The Oil Policy Committee shall henceforth consist of the United States Trade Representative, chair, and the Secretaries of State, Treasury, Defense, the Interior, Commerce and Energy, the Attorney General, and the Chairman of the Council of Economic Advisers as members.".

(e) Sections 2(b) and 3(a), the first sentence of section 3(c), and sections 3(e), 3(f), and 6 of Executive Order 11846 of March 27, 1975, as amended, are revoked.

(f)(1) Section 1(a)(5) of Executive Order 11858 of May 7, 1975, is amended to read: "(5) The United States Trade Representative".

(2) Section 1(a)(6) of such order is amended to read: "(6) The Chairman of the Council of Economic Advisers".

(g) Executive Order 12096 of November 2, 1978, is revoked.

(h) The last paragraph of the Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (dated December 14, 1979) (44 FR 74781, at 74784; December 18, 1979), delegating functions under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, is revoked.

(i) Any reference to the Office of the Special Representative for Trade Negotiations or to the Special Representative for Trade Negotiations in any Executive order, proclamation, or other document shall be deemed to refer to the Office of the United States Trade Representative or to the United States Trade Representative, respectively.

Sec. 1-106. Incidental Transfers and Reassignments.

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions transferred or reassigned by the provisions of this order as the Director of the Office of Management and Budget shall determine shall be transferred or reassigned for use in connection with such functions.

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Sec. 1-107. Effective Dates.

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5(c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979, and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan shall take effect as of April 1, 1980.

JIMMY CARTER.

THE WHITE HOUSE.
January 2, 1980.

2. Export Administration

a. Export Administration Act of 1979 [1]

Public Law 96-72 [S. 737], 93 Stat. 503, approved September 29, 1979, as amended by Public Law 96-533 [H.R. 6942], 94 Stat. 3131 at 3157, approved December 16, 1980; and by Public Law 97-145 [H.R. 3567], 95 Stat. 1727, approved December 29, 1981

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

Sec. 2. The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nation's economy.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

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[1] 50 U.S.C. app. 2401-2420. This act replaces the Export Administration Act of 1969, as amended, which expired on Sept. 30, 1979.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can curtail the efforts of American business to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to achievement of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

DECLARATION OF POLICY

Sec. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform

export control policy by all nations with which the United States has defense treaty commitments.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make every reasonable effort to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before resorting to the imposition of controls on exports from the United States. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense

treaty commitments in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

GENERAL PROVISIONS

Sec. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) COMMODITY CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "commodity control list") consisting of any goods or technology subject to export controls under this Act.

(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States.

(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The Presi-

dent may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

Sec. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2)(A) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(B) Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries that pose a threat to the security of the United States. Such regulations shall not be based upon the assumption that such effective safeguards can be devised.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—In administering export controls for national security purposes under this section,

United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate. The President shall review not less frequently than every 3 years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence.

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the commodity control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulation shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms

through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, and

(C) goods accompanied by sophisticated operation, application, or maintenance know-how,

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.

(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license in lieu of a validated license.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agree-

ment, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.

(4) Not later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.

(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation, establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with re-

spect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.

(4) In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(5) In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.

(6) Each department or agency of the United States with reponsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Export Administration concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(g) INDEXING.—In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such

goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjuction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to

which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained nothwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.

(i) MULTILATERAL EXPORT CONTROLS.—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.

(4) Agreement on more effective procedures for enforcing the export controls agreed to pursuant to paragraph (3).

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency or the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with

other countries regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.

(l) DIVERSION TO MILITARY USE OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary for as long as that diversion to significant military use continues—

(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national security controls under this section which contribute to that particular military use, regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act with respect to the party referred to in subparagraph (A) as are feasible to deter the further military use of the previously exported goods or technology.

(2) As used in this subsection, the terms "diversion to significant military use" and "significant military use" means the use of United States goods or technology to design or produce any item on the United States Munitions List.

FOREIGN POLICY CONTROLS

Sec. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (e). Any such extension and any subsequent extension shall not be for a period of more than one year.

(3) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of

this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(4) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(b) CRITERIA.—When imposing, expanding, or extending export controls under this section, the President shall consider—

(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) the ability of the United States to enforce the proposed controls effectively; and

(6) the foreign policy consequences of not imposing controls.

(c) CONSULTATION WITH INDUSTRY.—The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.

(d) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(e) NOTIFICATION TO CONGRESS.—The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying—

(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and

(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.

(f) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.[2]—This section does not authorize export controls on medicine or medical supplies. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of exports controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress together with a statement of the reasons for that determination.[3] It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food[4] under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981.[5]

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[2] The reference to certain food exports in the subsection title was added by sec. 6 of Public Law 97-145 (95 Stat. 1728).

[3] Except for the first sentence, the text to this point in subsec. (f) was added by sec. 6(2) of Public Law 97-145 (95 Stat. 1728).

[4] The reference to food was added by sec. 6(3) of Public Law 97-145 (95 Stat. 1729).

[5] The words to this point beginning with "or to any export control of food * * * " were added by sec. 6(4) of Public Law 97-145 (95 Stat. 1729).

(g) FOREIGN AVAILABILITY.—In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(h) INTERNATIONAL OBLIGATION.—The provisions of subsections (b), (c), (d), (f), and (g) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days[6] before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(1) Such country has repeatedly provided support for acts of international terrorism.

(2) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(j) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(k) CONTROL LIST.—The Secretary shall establish and maintain, as part of the commodity control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. Such goods or technology shall be clearly identified as subject to controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case

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[6] The requirement to notify the Senate Committee on Foreign Relations and the requirement to notify all congressional committees at least 30 days in advance were added by Sec. 111 of the International Security and Development Cooperation Act of 1980 (Public Law 96-533; 94 Stat. 3138).

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of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possession, of goods and technology comparable to those controlled for export from the United States under this section.

SHORT SUPPLY CONTROLS

Sec. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Sec-

retary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may transmit a written petition to the Secretary requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating (i) that there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply, and (ii) that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating the price increase or domestic shortage may be related to exports.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall (A) include the name of the material which is the subject of the petition, (B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, (C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and (D) provide that interested persons shall have a period of 30 days commencing with the date of publication of such notice to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall—

(A) determine whether to impose monitoring or controls, or both, on the export of such material, in order to carry out the policy set forth in section 3(2)(C) of this Act; and

(B) publish in the Federal Register a detailed statement of the reasons for such determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days following the publication of such proposed regulations, and after considering any public comments thereon, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses thereto, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls on a temporary basis after a petition is filed under paragraph (1)(A) but before the Secretary makes a determination under paragraph (3) if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined

and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—(1) No refined petroleum products may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic infla-

tionary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereof; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja

plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs may be exported from the United States.

(2) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(3) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(4) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber without wane;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) EXPORT OF HORSES.—(1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.

(2) The Secretary, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers, permitting the export by sea of a specified consignment of horses, if the Secretary, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

FOREIGN BOYCOTTS

SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the

object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that

prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by any individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country or trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil right laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses)

otherwise prohibited, which are not within the intent of such exceptions.

(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

Sec. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption grant-

ed may be subject to such conditions as the Secretary considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement of which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

Sec. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on ex-

ports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section.

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—In each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 90 days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—In each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 30 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in

the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) If the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 30-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) ACTION BY THE SECRETARY.—(1) Within 90 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 90-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations.

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant of the specific questions raised and any such negative considerations or recommendations, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor.

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a

significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 30 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

If the President notifies the Secretary, within 30 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.

(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date

of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 60 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 60-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 60-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 30 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

VIOLATIONS

SEC. 11. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 year, or both.

(b) WILLFUL VIOLATIONS.—(1)[7] Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2)[8] Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

For purposes of this paragraph, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.[9]

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national se-

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[7] Sec. 4(a) of Public Law 97-145 (95 Stat. 1727) amended and restated this paragraph by adding subpar. (A) and (B) and deleting text concerning penalties for violations. Previously, violators were subject to fines of "not more than five times the value of the exports involved or $100,000, whichever is greater, or imprisoned not more than 10 years, or both." Public Law 97-145 further stated that this amendment would apply only to violations occurring after the date of enactment of the act (Dec. 29, 1981).

[8] Sec. 4(c) of Public Law 97-145 (95 Stat.1727) amended and restated this paragraph by adding subpar (A) and (B) and deleting text concerning penalties for violations. Previously, violators were subject to fines of "not more than five times the value of the exports involved or $100,000, whichever is greater, or imprisoned for not more than 5 years, or both." Public Law 97-145 further stated that this amendment would apply only to violations occurring after the date of enactment of the act (Dec. 29, 1981.)

[9] For text, see vol. I, page 138.

curity controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.[10]

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(c) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

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[10] The final phrase of this paragraph beginning with the words ", except that the civil penalty * * *" was added by sec. 4(c) of Public Law 97-145 (95 Stat.1727). Public Law 97-145 further stated that this amendment would apply only to violations occurring after the date of enactment of the act (Dec. 29, 1981).

(g) OTHER AUTHORITIES.—Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

Sec. 12. (a) GENERAL AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969,[11] the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent

[11] Expired Sept. 30, 1979.

permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2)[12] Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information obtained at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3)[13] Departments or agencies which obtain information which is relevant to the enforcement of this Act shall furnish such information to the department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section.

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, rec-

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[12] Par. (2) was amended and restated by sec. 5 of Public Law 97-145 (95 Stat. 1728).
[13] Par. (3) was added by sec. 3 of Public Law 97-145 (95 Stat. 1727).

ordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Sec. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2), the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

ANNUAL REPORT

Sec. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentially of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence

demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(5);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an analysis of the time required to process license applications, the number and disposition of export license applications taking more than 90 days to process, and an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

(19) violations under section 11 and enforcement activities under section 12; and

(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to

impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

REGULATORY AUTHORITY

Sec. 15. The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.

DEFINITIONS

Sec. 16. As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the information and know-how that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves; and

(5) the term "Secretary" means the Secretary of Commerce.

EFFECT ON OTHER ACTS

Sec. 17. (a) IN GENERAL.—Nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).[14]

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to

[14] For text, see vol. I, page 221.

a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.[14] For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.[15]

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

AUTHORIZATION OF APPROPRIATIONS

Sec. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1)[16] $9,659,000 for each of the fiscal years 1982 and 1983; and

(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

Sec. 19. (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.[17]

(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

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[15] For text, see page 516.

[16] The authorization for fiscal years 1982-83 was added by sec. 2(a) of Public Law 97-145 (95 Stat. 1727), effective Oct. 1, 1981. The authorization for each of fiscal years 1980 and 1981 was $8,000,000 of which $1,250,000 was earmarked for purposes of carrying out foreign availability assessments pursuant to sec. 5(f)(5).

[17] Such Act expired Sept. 30, 1979.

(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

TERMINATION DATE

Sec. 20. The authority granted by this Act terminates on September 30, 1983, or upon any prior date which the President by proclamation may designate.

SAVINGS PROVISIONS

Sec. 21. (a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

[18] **Sec. 22.** * * *

INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

[19] **Sec. 23.** * * *

MISCELLANEOUS

[20] **Sec. 24.** * * *

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[18] Sec. 22 consists of technical amendments to the Arms Export Control Act, the Energy Policy and Conservation Act and the Internal Revenue Code of 1954.

[19] Sec. 23 provides authorization of funds for fiscal years 1980 and 1981 for the International Investment Survey Act. See page 325 for text.

[20] Sec. 24 amends Public Law 480.

b. Export Administration Amendments Act of 1981

Partial text of Public Law 97-145 [H.R. 3567], 95 Stat. 1727, approved December 29, 1981

AN ACT To authorize appropriations for the fiscal years 1982 and 1983 to carry out the purposes of the Export Administration Act of 1979, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Export Administration Amendments Act of 1981".

* * * * * * *

Sec. 7. Notwithstanding any other provision of law, no provision of the Export Administration Act of 1979, as amended by this Act, or of any other Act shall be construed to prohibit the exercise of authorities contained in the Export Administration Act of 1979 to impose a total embargo in the event of Soviet or Warsaw Pact military action against Poland.

c. Agricultural Exports

Partial Text of Public Law 97-444 [Futures Trading Act of 1982; H.R. 5447], 96 Stat. 2294 at 2326, approved January 11, 1983

AN ACT To extend the Commodity Exchange Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Futures Trading Act of 1982".

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AGRICULTURAL EXPORTS

Sec. 238. Section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3)[1] is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, the President shall not prohibit or curtail the export of any agricultural commodity or the products thereof under an export sales contract (1) entered into before the President announces an action that would otherwise prohibit or curtail the export of the commodity or products thereof, (2) the terms of which require delivery of the commodity or products thereof within two hundred and seventy days after the date the suspension of trade is imposed, except that the President may prohibit or curtail the export of any commodity or the products thereof during a period for which the President has declared a national emergency or for which Congress has declared war.".

[1] Sec. 812 requires all exporters of certain agricultural commodities to report to the Secretary of Agriculture specified information regarding such exports.

d. Executive Order 12214, May 2, 1980, 45 F.R. 29783

ADMINISTRATION OF THE EXPORT ADMINISTRATION ACT OF 1979

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96–72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

1–101. Except as provided in Section 1–102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96–72; 50 U.S.C. App. 2401 *et seq.*), are delegated to the Secretary of Commerce.

1–102. (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i), and 6(g) of the Act are delegated to the Secretary of State.

1–103. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued or otherwise taken under, or continued in existence by, Section 21 of the Act or Executive Order No. 12002, and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.[1]

1–104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

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[1] For text of E.O. 12002, see page 273.

e. Executive Order 12002, July 7, 1977, 42 F.R. 35623

Administration of the Export Administration Act of 1969, as Amended [1]

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

Section 1. Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.) hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

Sec. 2. (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act, which directs that every reasonable effort be made to secure the removal of reduction of assistance by foreign countries to international terrorists through cooperation and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

Sec. 3. The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as members the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, the Secretary of Defense, and the Chairman of the East-West Foreign Trade Board (Section 7 of Executive Order No. 11846, as amended). No alternative Board members shall be designated, but the acting head of any department may serve in lieu of the head of the concerned department. In the case of the East-West Foreign Trade Board, the Deputy Chairman or the Executive Secretary may serve in lieu of the Chairman. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

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[1] While the Export Administration Act of 1969 expired on Sept. 30, 1979, it was replaced by the Export Administration Act of 1979. Sec. 21 of the 1979 act provided that all orders (which would include this executive order) issued under the 1969 act and which were in force on the effective date of the 1979 act, would continue in effect until modified, superseded, set aside, or revoked. Executive Order 12214 was issued on May 2, 1980, providing for the administration of the Export Administration Act of 1979. However, the new Executive order stated that it did not supersede or otherwise affect Executive Order 12002.

Sec. 4. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, and the domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

Sec. 5. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

Sec. 6. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked in Section 7 of this Order, and not revoked administratively or legislatively, shall remain in full force and effect under this Order until amended, modified, or terminated by proper authority. The revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

Sec. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

f. Executive Order 12131, May 4, 1979, 44 F.R. 26841

THE PRESIDENT'S EXPORT COUNCIL

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to expand the membership of the President's Export Council, in accord with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

1-1. Establishment and Membership.

1-101. There is established the President's Export Council.

1-102. The membership of the Council shall be as follows:

(a) The heads of the following Executive agencies or their representatives:

(1) Department of State.
(2) Department of the Treasury.
(3) Department of Agriculture.
(4) Department of Commerce.
(5) Department of Labor.
(6) Office of the Special Representative for Trade Negotiations.
(7) Export-Import Bank of the United States.

(b) Three members of the United States Senate, designated by the President of the Senate, and three members of the United States House of Representatives designated by the Speaker of the House.

(c) Not to exceed 28 citizens appointed by the President. These individuals shall be selected from those who are not full-time Federal officers or employees. They shall include representatives of business and industry, agriculture, and labor.

1-103. The President shall designate a Chairman and a Vice Chairman from among the members appointed by the President.

1-104. The Secretary of Commerce, with the concurrence of the Chairman, shall appoint an Executive Director.

1-2. Functions.

1-201. The Council shall serve as a national advisory body on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy, which was announced on September 26, 1978. It shall, through the Secretary of Commerce, report to the President on its activities and on its recommendations for expanding United States exports.

1-202. The Council should survey and evaluate the export expansion activities of the communities represented by the membership. It should identify and examine specific problems which business, industrial, and agricultural practices may cause for export trade, and examine the needs of business, industry, and agriculture to

expand their efforts. The Council should recommend specific solutions to these problems and needs.

1-203. The Council may act as liaison among the communities represented by the membership; and, may provide a forum for those communities on current and emerging problems and issues in the field of export expansion. The Council should encourage the business, industrial, and agricultural communities to enter new foreign markets and to expand existing export programs.

1-204. The Council shall provide advice on Federal plans and actions that affect export expansion policies which have an impact on those communities represented by the membership.

1-205. The Council may establish, with the concurrence of the Secretary of Commerce, an executive committee and such other subordinate committees it considers necessary for the performance of its functions. The Chairman of a subordinate committee shall be designated, with the concurrence of the Secretary of Commerce, by the Chairman of the Council from among the membership of the Council. Members of subordinate committees shall be appointed by the Secretary of Commerce.

1-3. Administrative Provisions.

1-301. The Secretary of Commerce shall, to the extent permitted by law, provide the Council, including its executive and subordinate committees, with administrative and staff services, support and facilities as may be necessary for the effective performance of its functions.

1-302. Each member of the Council, including its executive and subordinate committees, who is not otherwise paid a salary by the Federal Government, shall receive no compensation from the United States by virtue of their service on the Council, but all members may receive the transportation and travel expenses, including per diem in lieu of subsistence, authorized by law (5 U.S.C. 5702 and 5703).

1-4. General Provisions.

1-401. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Council, shall be performed by the Secretary of Commerce in accordance with guidelines and procedures established by the Administrator of General Services.

1-402. Executive Order No. 11753 is revoked; however, nothing in this Order shall be deemed to require new charters for the Council, including its executive and subordinate committees, which were current immediately prior to the issuance of this Order.

1-403. The Council shall terminate on December 31, 1980, unless sooner extended.

3. International Economic Sanctions

a. Trading With the Enemy Act, as amended

Partial text of Public Law 65-91 [H.R. 4960], 40 Stat. 415, approved October 6, 1917, as amended by Public Law 65-217 [H.R. 12923], 40 Stat. 965, approved September 24, 1918; Public Law 73-1 [H.R. 1491], 48 Stat. 1, approved March 9, 1933; Public Resolution 76-69 [S.J. Res. 252], 54 Stat. 179, approved May 7, 1960; Public Law 77-354 [H.R. 6233], 55 Stat. 838, approved December 18, 1941; Presidential Proclamation 2695, effective July 4, 1946, 60 Stat. 1352; and by Public Law 95-223 [H.R. 7738], 91 Stat. 1625, approved December 28, 1977

* * * * * * *

Section 5. (b)[1](1) During the time of war,[2] the President may through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer withdrawal, transportation, importation or exportation of, or dealing in or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such in-

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[1] 12 U.S.C. 95, a. Subsec. (b) was amended and restated by sec. 301 of Public Law 77-354 (55 Stat. 839).

[2] The words "or during any other period of national emergency declared by the President", which previously appeared at this point, were struck out by sec. 101(a) of Public Law 95-223 (91 Stat. 1625). Sec. 101 (b) and (c) of the same act further stipulated:

"(b) Notwithstanding the amendment made by subsection (a), the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act. The President may extend the exercise of such authorities for one-year periods upon a determination of each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

"(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions."

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terest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.[3]

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof:[4] *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision.[5] As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

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[3] The words "; and the President may, in the manner hereinabove provided, take other or further measures not inconsistent herewith for the enforcement of this subdivision", which previously appeared at this point, were struck out by sec. 102(2) of Public Law 95–223 (91 Stat. 1625).

[4] Words "including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas" immediately preceding the proviso in subsec. (b)(3) of this section, have been omitted on the authority of 1946 Proclamation No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

[5] Sec. 103(b) of Public Law 95–223 (91 Stat. 1626) struck out the following sentence which previously appeared at this point:

"Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both."

b. International Emergency Economic Powers Act

Title II of Public Law 95–223 [H.R. 7738], 91 Stat. 1625, approved December 28, 1977

NOTE.—Except for the provisions noted below, this Act consists of amendments to the Trading With the Enemy Act and the Export Administration Act of 1969.

AN ACT With respect to the powers of the President in time of war or national emergency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENTS TO THE TRADING WITH THE ENEMY ACT

REMOVAL OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

Sec. 101. (a) * * *

(b)[1] Notwithstanding the amendment made by subsection (a), the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act. The President may extend the exercise of such authorities for one-year periods upon a determination of each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.[2]

(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions

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[1] 50 U.S.C. app. 5.

[2] Since 1977, the President has utilized this provision each year to extend certain authorities being exercised prior to July 1, 1977 under sec. 5(b) of the Trading with the Enemy Act. The most recent action, a memorandum of Sept. 8, 1982, extended until Sept. 14, 1983 the exercise of those authorities with respect to countries affected by the Foreign Assets Control Regulations, the Transaction Control Regulations, the Cuban Assets Control Regulations, and the Foreign Funds Control Regulations. For complete text of this memorandum, see the Federal Register, Sept. 10, 1982, p. 39797.

of subsection (b) of this section are inconsistent with those provisions.

(d) Paragraph (1) of section 502(a) of the National Emergencies Act is repealed.

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Sec. 103. (a) Section 16 of the Trading With the Enemy Act is amended by striking out "$10,000" and inserting in lieu thereof "$50,000".

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TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS [3]

SHORT TITLE

Sec. 201. This title may be cited as the "International Emergency Economic Powers Act".

SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED

Sec. 202. (a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

GRANTS OF AUTHORITIES

Sec. 203. (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in

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[3] 50 U.S.C. app. 1701–1706.

which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.[4]

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memorandums, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title, (B) or in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

CONSULTATION AND REPORTS

Sec. 204. (a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this title and shall consult regularly with the Congress so long as such authorities are exercised.

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[4] See E.O. 12170, 12205, and 12211 (pages 303, 304, and 306) concerning the President exercising authority under this subsection.

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying—[5]

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

AUTHORITY TO ISSUE REGULATIONS

Sec. 205. The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this title.

PENALTIES

Sec. 206. (a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SAVINGS PROVISION

Sec. 207. (a)(1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this title, any authorities granted by this title, which are exercised on the date of such termination on the basis of such national emergency to prohibit

[5] Such reports were transmitted to Congress regarding the authority exercised by the President as discussed in E.O. 12170, 12205 and 12211 (pages 303, 304, and 306).

transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit Transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

Sec. 208. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

TITLE III—AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1969

* * * * * * *

c. Hostage Release and Economic Relations With Iran

(1) Executive Order 12276, January 19, 1981, 46 F.R. 7913

DIRECTION RELATING TO ESTABLISHMENT OF ESCROW ACCOUNTS

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. The Secretary of the Treasury is authorized to enter into, and to license, aurhorize, direct, and compel any appropriate official and/or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements with a foreign central bank and with the Central Bank of Algeria under which certain money and other assets, as and when directed by the Secretary of the Treasury, shall be credited by the foreign central bank to an escrow account on its books in the name of the Central Bank of Algeria, for transfer to the Government of Iran if and when the Central Bank of Algeria, receives from the Government of Algeria a certification that the 52 U.S. diplomats and nationals being held hostage in Iran have safely departed from Iran. Such agreements shall include other parties and terms as determined by the Secretary of the Treasury to be appropriate to carry out the purposes of this Order.

1-102. The Secretary of the Treasury is authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities, or controlled entities have an interest and to hold or transfer such money and other assets, and any interest earned thereon, in such a manner as he deems necessary to fulfill the rights and obligations of the United States under the Declaration of the Government of the Democratic and Popular Republic of Algeria dated January 19,

1981, and the escrow and related agreements described in paragraph 1-101 of this Order. Such money and other assets may be held in interest-bearing form and where possible shall be invested with or through the entity holding the money or asset on the effective date of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets referred to in paragraphs 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.)* to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

(2) Executive Order 12277, January 19, 1981, 46 F.R. 7915

Direction To Transfer Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this order shall be transfered as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. The Federal Reserve Bank of New York is licensed, authorized, directed, and compelled to transfer to accounts at the Bank of England, and subsequently to transfer to accounts at the Bank of England established pursuant to an escrow agreement approved by the Secretary of the Treasury, all gold bullion, and other assets (or the equivalent thereof) in its custody, of the Government of Iran, or its agencies, instrumentalities or controlled entities. Such transfers shall be executed when and in the manner directed by the Secretary of the Treasury. The Secretary of the Treasury is also authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York to engage in whatever further transactions he deems appropriate and consistent with the purposes of this Order, including any transactions related to the return of such bullion and other assets pursuant to the escrow agreement.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other

action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

(3) Executive Order 12278, January 19, 1981, 46 F.R. 7917

Direction To Transfer Iranian Government Assets Overseas

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a United States bank or subsidiary thereof, which branch or office is located outside the territory of the United States and which on or after 8:10 a.m. E.S.T. on November 14, 1979 (a) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities, is licensed, authorized, directed, and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The Secretary of the Treasury shall determine when the transfers required by this section shall take place. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria and its Annex.

1-102. Any banking institution subject to the jurisdiction of the United States that has executed a setoff on or after November 14, 1979, at 8:10 a.m. E.S.T. against Iranian funds, securities, or deposits referred to in section 1-101 is hereby licensed, authorized, di-

rected, and compelled to cancel such setoff and to transfer all funds, securities, and deposits which have been subject to such setoff, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of section 1-101 of this order.

1-103. If the funds, securities and deposits described in section 1-101 are not promptly transferred to the control of the Government of Iran, such funds, securities, and deposits shall be returned to the banking institutions holding them on the effective date of this Order and the setoffs described in section 1-102 shall be in force as if this Order had not been issued and the status of all such funds, securities, deposits and set-offs shall be *status quo ante.*

1-104. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Sections 1-101 and 1-102 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in Sections 1-101 and 1-102 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Sections 1-101 and 1-102 of this Order.

1-105. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in Sections 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-106. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-107. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-108. This Order shall be effective immediately.

(4) Executive Order 12279, January 19, 1981, 46 F.R. 7919

Direction To Transfer Iranian Government Assets Held by Domestic Banks

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 22 of the United States Code, Section 1732 of 3 Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order.

1-101. Any branch or office of a banking institution subject to the jurisdication of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorization for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties, described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST,

including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality, and all sections taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

(5) Executive Order 12280, January 19, 1981, 46 F.R. 7921

Direction To Transfer Iranian Government Financial Assets Held by Non-Banking Institutions

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalizaton of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order.

1-101. Any person subject to the jurisdiction of the United States which is not a banking institution and is on the effective date in possession or control of funds or securities of Iran or its agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, intrumentalities, and controlled entities, whether acquired by court order or otherwise, are

nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive order, any other Executive order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the oligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

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(6) Executive Order 12281, January 19, 1981, 46 F.R. 7923

DIRECTION TO TRANSFER CERTAIN IRANIAN GOVERNMENT ASSETS

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declaration of national emergency of Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iran Assets Control Regulations, other than rights, powers, and privileges of

the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

(7) Executive Order 12282, January 19, 1981, 46 F.R. 7925

Revocation of Prohibitions Against Transactions Involving Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers (50 U.S.C. 1701), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Exchange Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostage and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order.

1-101. The prohibitions contained in Executive Order 12205 of April 7, 1980,[1] and Executive Order 12211 of April 17, 1980,[2] and Proclamation 4702 of November 12, 1979, are hereby revoked.

1-102. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1-103. This Order shall be effective immediately.

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[1] For text, see page 304.
[2] For text, see page 306.

(8) Executive Order 12283, January 19, 1981, 46 F.R. 7928

Non-Prosecution of Claims of Hostages and for Actions at the United States Embassy and Elsewhere

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. The Secretary of the Treasury shall promulgate regulations: (a) prohibiting any person subject to U.S. jurisdiction from prosecuting in any court within the United States or elsewhere any claim against the Government of Iran arising out of events occurring before the date of this Order relating to (1) the seizure of the hostages on November 4, 1979, (2) their subsequent detention, (3) injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979, or (4) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran; (b) prohibiting any person not a U.S. national from prosecuting any such claim in any court within the United States; (c) ordering the termination of any previously instituted judicial proceedings based upon such claims; and (d) prohibiting the enforcement of any judicial order issued in the course of such proceedings.

1-102. The Attorney General of the United States is authorized and directed, immediately upon the issuance of regulations in accordance with Section 1-101, to take all appropriate measures to notify all appropriate courts of the existence of this Order and implementing regulations and the resulting termination of litigation.

1-103. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the Internation-

al Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1-104. This Order shall be effective immediately.

(9) Executive Order 12284, January 19, 1981. 46 F.R. 7929

Restrictions on the Transfer of Property of the Former Shah of Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 3, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person until all such litigation against such estate or person is finally terminated.

1-102. The Secretary of the Treasury is authorized and directed (a) to promulgate regulations requiring all persons who are subject to the jurisdiction of the United States and who, as of November 14, 1979, or as of this date, have actual or constructive possession of property of the kind described in Section 1-101, or knowledge of such possession by others, to report such possession or knowledge thereof, to the Secretary of the Treasury in accordance with such regulations and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such reports to the fullest extent permitted by law. Such reports shall be required as to all individuals described in 1-101 and shall be required to be filed within 30 days after publication of a notice in the Federal Register.

1-103. The Secretary of the Treasury is authorized and directed (a) to require all agencies within the Executive Branch of the United States Government to deliver to the Secretary all official financial books and records which serve to identify any property of

the kind described in Section 1-101 of this Order, and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such books and records to the fullest extent permitted by law.

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1-101 should be enforced by such courts in accordance with United States law.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

(10) Executive Order 12285, January 19, 1981, 46 F.R. 7931, as amended by Executive Order 12307, June 4, 1981, 46 F.R. 30483, and by Executive Order 12317, August 14, 1981, 46 F.R. 42241

PRESIDENT'S COMMISSION ON HOSTAGE COMPENSATION

By the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

1-1. Establishment.

1-101. There is established the President's Commission on Hostage Compensation, hereinafter referred to as the Commission, which shall be composed of not more than nine members who shall be appointed by the President.

1-102. The President shall designate a Chairman from among the members.

1-2. Functions.

1-201. The Commission shall study and analyze, and make recommendations to the President on, the question whether the United States should provide financial compensation to United States nationals who have been held in captivity outside the United States, either (1) by or with the approval of a foreign government, or (2) by reason of their status as employees of the United States Government or as dependents of such employees.

1-202. The Commission shall submit a final report to the President no later than September 21, 1981.[1] The report shall contain the Commission's recommendations as to whether legislation to deal with the foregoing compensation issue is appropriate and, if so, as to what such legislation should provide. The report shall specifically contain the Commission's recommendations concerning the compensation of United States nationals held hostage in Iran on and after November 4, 1979.

1-203. In analyzing the foregoing issues the Commission shall consider all factors which it may consider relevant, including the prior practice with respect to governmental compensation, both by the United States Government and by foreign governments, of persons held in captivity abroad.

1-204. In the performance of its functions the Commission shall specifically address the following issues:

(a) whether any legislation authorizing compensation should set forth specific legislative standards, or whether the stand-

[1] The date for submission of this report was extended from Apr. 19, 1981, to Aug. 20, 1981, by Executive Order 12307; further extended to Sept. 21, 1981, by Executive Order 12317.

ards by which to award compensation should be administratively developed;

(b) whether any standards developed either legislatively or administratively should be applied uniformly to civilian and military government employees, dependents of such employees, and private citizens, or whether separate criteria should be developed for these or other categories;

(c) whether an existing administrative body should determine amounts of compensation, or whether a new body should be established for this purpose; and

(d) whether compensation should be paid for injuries suffered by members of families of persons who have been held in captivity.

1–3. Administrative Provisions.

1–301. In performing its functions the Commission shall conduct such studies, reviews, and inquiries as may be necessary. In addition to conducting open meetings in accordance with the Federal Advisory Committee Act, the Commission may[2] conduct public hearings to identify critical issues and possible solutions related to compensation.

1–302. The Commission is authorized to request from any Executive agency such information that may be deemed necessary to carry out its functions under this Order. Each Executive agency shall, to the extent permitted by law, furnish such information to the Commission in the performance of its functions under this Order.

1–303. Each member of the Commission who is not otherwise employed in the Federal Government may receive, to the extent permitted by law, compensation for each day he or she is engaged in the work of the Commission at a rate not to exceed the maximum daily rate now or hereafter prescribed by law for GS–18 of the General Schedule, and may also receive transportation and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

1–304. All necessary administrative staff services, support, facilities, and expenses of the Commission shall, to the extent permitted by law, be furnished by the Department of State.

1–4. General Provisions.

1–401. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), except that the reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of State in accordance with guidelines and procedures established by the Administrator of General Services.

1–402. The Commission shall terminate thirty days after submitting its report.

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[2] The word "may" was substituted in lieu of the word "shall" by Executive Order 12307.

(11) Executive Order 12170, November 14, 1979, 44 F.R. 65729

BLOCKING IRANIAN GOVERNMENT PROPERTY [1]

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 et seq., the National Emergencies Act, 50 U.S.C. sec. 1601 et seq., and 3 U.S.C. sec. 301,

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.[2]

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

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[1] Other actions taken by the President regarding the Iranian crisis included the following: Proclamation 4702 (44 F.R. 65581) was issued on Nov. 12, 1979 prohibiting oil from Iran from entering the United States revoked Jan. 19, 1981). On Nov. 26, 1979, the President issued Executive Order 12172 (44 F.R. 67947) which delegated authority conferred upon him by 8 U.S.C. 1185 (travel control of citizens and aliens during war or national emergency) to the Secretary of State and the Attorney General with respect to Iranians holding nonimmigrant visas. See also the next two Executive orders on the pages that follow.

[2] In notice of Nov. 12, 1980 (45 F.R. 75159), the President stated that the situation which prompted the declaration of this national emergency continues and that therefore, this national emergency must continue in effect after Nov. 14, 1980. By notice of Nov. 12, 1981 (46 F.R. 55915), the President notified Congress that the national emergency must continue in effect beyond Nov. 14, 1981. By notice of Nov. 8, 1982 (47 F.R. 50841), the President notified Congress that the national emergency must continue beyond Nov. 14, 1982.

(12) Executive Order 12205, April 7, 1980, 45 F.R. 24099, as amended by Executive Order 12211, April 17, 1980, 45 F.R. 26685

PROHIBITING CERTAIN TRANSACTIONS WITH IRAN

NOTE.—Prohibitions contained in this Executive Order were revoked by Executive Order 12282, January 19, 1981, 46 F.R. 7925. See page 296 for text.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in order to take steps additional to those set forth in Executive Order No. 12170 of November 14, 1979, to deal with the threat to the national security, foreign policy and economy of the United States referred to in that Order, and in furtherance of the objectives of United National Security Council Resolution 461 (1979) adopted on December 31, 1979, it is hereby ordered as follows:

1-101. The following are prohibited effective immediately, notwithstanding any contracts entered into or license granted before the date of this Order:

(a) The sale, supply or other transfer, by any person subject to the jurisdiction of the United States, of any items, commodities or products, except food, medicine and supplies intended strictly for medical purposes, and donations of clothing intended to be used to relieve human suffering, from the United States, or from any foreign country, whether or not originating in the United States, either to or destined for Iran, an Iranian governmental entity in Iran, any other person or body in Iran or any other person or body for the purposes of any enterprise carried on in Iran.

(b) The shipment by vessel, aircraft, railway or other land transport of United States registration or owned by or under charter to any person subject to the jurisdiction of the United States or the carriage (whether or not in bond) by land transport facilities across the United States of any of the items, commodities and products covered by paragraph (a) of this section which are consigned to or destined for Iran, an Iranian governmental entity or any person or body in Iran, or to any enterprise carried on in Iran.

(c) The shipment from the United States of any of the items, products and commodities covered by paragraph (a) of this section on vessels or aircraft registered in Iran.

(d) The following acts, when committed by any person subject to the jurisdiction of the United States in connection with any trans-

action involving Iran, an Iranian governmental entity, an enterprise controlled by Iran or an Iranian governmental entity, or any person in Iran:

(i) Making available any new credits or loans;

(ii) Making available any new deposit facilities or allowing substantial increases in non-dollar deposits which exist as of the date of this Order.

(iii) Allowing more favorable terms of payment than are customarily used in international commercial transactions;

(iv) Failing to act in a businesslike manner in exercising any rights when payments due on existing credits or loans are not made in a timely manner; or

(v)[1] Make any payment, transfer of credit, or other transfer of funds or other property or interests therein, except for purposes of family remittances.

(e) The engaging by any person subject to the jurisdiction of the United States in any service contract in support of an industrial project in Iran, except any such contract entered into prior to the date of this Order or concerned with medical care.

(f) The engaging by any person subject to the jurisdiction of the United States in any transaction which evades or avoids, or has the purpose or effect of evading or avoiding, any of the prohibitions set forth in this section.

1-102. The prohibitions in section 1-101 above shall apply to transactions by any person subject to the jurisdiction of the United States which is a non-banking association, corporation, or other organization organized and doing business under the laws of any foreign country.

1-103. The Secretary of the Treasury is delegated, and authorized to exercise, all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government.

1-104. The Secretary of the Treasury shall ensure that actions taken pursuant to this Order and Executive Order No. 12170 are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

1-105. This Order is effective immediately. In accord with Section 401 of the National Emergencies Act (50 U.S.C. 1641) and Section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703), it shall be immediately transmitted to the Congress and published in the Federal Register.

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[1] Par. (v) was added by sec. 1-101 of Executive Order 12211, Apr. 17, 1980, 45 F.R. 26685.

(13) Executive Order 12211, April 17, 1980, 45 F.R. 26685

Further Prohibitions on Transactions With Iran

> Note.—Prohibitions contained in this Executive Order were revoked by Executive Order 12282, January 19, 1981, 46 F.R. 7925. See page 296 for text.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Sections 1732 and 2656 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in order to take steps additional to those set forth in Executive Order No. 12170 of November 14, 1979, and Executive Order No. 12205 of April 7, 1980, to deal with the threat to the national security, foreign policy and economy of the United States referred to in those Orders, and the added unusual and extraordinary threat to the national security, foreign policy and economy of the United States created by subsequent events in Iran and neighboring countries, including the Soviet invasion of Afghanistan, with respect to which I hereby declare a national emergency, and to carry out the policy of the United States to deny the use of its resources to aid, encourage or give sanctuary to those persons involved in directing, supporting or participating in acts of international terrorism, it is hereby ordered as follows:

1-101.[1] * * *

1-102. The following transactions are prohibited, notwithstanding any contracts entered into or licenses granted before the date of this Order:

(a) Effective immediately, the direct or indirect import from Iran into the United States of Iranian goods or services, other than materials imported for news publication or news broadcast dissemination.

(b) Effective immediately, any transactions with a foreign person or foreign entity by any citizen or permanent resident of the United States relating to that person's travel to Iran after the date of this Order.

(c) Effective seven days from the date of this Order, the payment by or on behalf of any citizen or permanent resident of the United States who is within Iran of any expenses for transactions within Iran.

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[1] Sec. 1-101 amended Executive Order 12205 (page 304).

The prohibitions in paragraphs (b) and (c) of this section shall not apply to a person who is also a citizen of Iran and those prohibitions and the prohibitions in section 1-101 shall not apply to a journalist or other person who is regularly employed by a news gathering or transmitting organization and who travels to Iran or is within Iran for the purpose of gathering or transmitting news, making news or documentary films, or similar activities.

1-103. The Secretary of the Treasury is hereby directed, effective fourteen days from the date of this Order, to revoke existing licenses for transactions by persons subject to the jurisdiction of the United States with Iran Air, the National Iranian Oil Company, and the National Iranian Gas Company previously issued pursuant to regulations under Executive Order No. 12170 or Executive Order No. 12205.

1-104. The Secretary of the Treasury is delegated, and authorized to exercise, all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government.

1-105. The Secretary of the Treasury shall ensure that actions taken by him pursuant to the above provisions of this Order, Executive Order No. 12170 and Executive Order No. 12205 are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

1-106. The Secretary of State is delegated, and authorized to exercise in furtherance of the purposes of this Order, the powers vested in the President by Section 2001 of the Revised Statutes (22 U.S.C. 1732), Section 1 of the Act of July 3, 1926 (22 U.S.C. 211a), and Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185), with respect to:

(a) the restriction of the use of United States passports for travel to, in or through Iran; and

(b) the regulation of departures from and entry into the United States in connection with travel to Iran by citizens and permanent residents of the United States.

1-107. Except as otherwise indicated herein, this Order is effective immediately. In accord with Section 401 of the National Emergencies Act (50 U.S.C. 1641) and Section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703), it shall be immediately transmitted to the Congress and published in the Federal Register.

(14) Executive Order 12294, February 24, 1981, 46 F.R. 14111

Suspension of Litigation Against Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170, issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Sec. 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Sec. 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Sec. 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

Sec. 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

Sec. 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Sec. 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. § 1732 to carry out the purposes of this Order.

Sec. 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

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(15) Executive Order 12313, July 13, 1981, 46 F.R. 36689

SPECIFICATION OF HOSTAGE RETURN DATE UNDER HOSTAGE RELIEF ACT OF 1980

By the authority vested in me as President of the United States of America by sections 101(2)(A) and 205(b)(1) of the Hostage Relief Act of 1980 (Public Law 96–449; 94 Stat. 1967, 1972; 5 U.S.C. 5561 note) (the "Hostage Act"), it is hereby ordered, for the purposes of these sections of the Hostage Act, that January 21, 1981, is specified as the date on which all citizens and resident aliens of the United States who were placed in a captive status due to the seizure of the United States Embassy in Iran have been returned to the United States or otherwise accounted for, and were no longer under foreign control.

4. Johnson Act—Financial Transactions With Foreign Governments [1] [2]

Partial text of Public Law 80-772 [H.R. 3190], 62 Stat. 744; 18 U.S.C. 955, Approved June 25, 1948

* * * * * * *

Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness, while such government, political subdivision, organization or association, is in default in the payment of its obligations, or any part thereof, to the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

This section is applicable to individuals, partnerships, corporations, or associations other than public corporations created by or pursuant to special authorizations of Congress, or corporations in which the United States has or exercises a controlling interest through stock ownership or otherwise. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this section shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof or of any organization or association acting for or on behalf of such government or political subdivision, or to making of any loan to such government, political subdivision, organization, or association.

* * * * * * *

[1] For text of Foreign Agents Registration Act of 1938, as amended (Public Law 75-583), see page 1021 of text.

[2] For text of Logan Act—Private correspondence with foreign governments (Public Law 80-722), see page 1037.

5. Foreign Investment in the United States

a. Foreign Investment Study Act of 1974

Public Law 93–479 [S. 2840], 88 Stat. 1450, approved October 26, 1974 [1]

AN ACT To authorize the Secretary of Commerce and the Secretary of the Treasury to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Investment Study Act of 1974".

Sec. 2. The Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States.

Sec. 3. The Departments of Commerce and Treasury, in consultation with appropriate agencies, shall determine the definitions and limitations of direct and portfolio investments for the purposes of the study authorized in section 2 of this Act.

Sec. 4. In carrying out the study described in section 2 of this Act, the Secretary of Commerce and the Secretary of the Treasury shall, respectively and jointly as may be appropriate—

(1) identify and collect such information as may be required to carry out the study authorized in section 2 of this Act;

(2) consult with and secure information from (and where appropriate the views of) representatives of industry, the financial community, labor, agriculture, science and technology, academic institutions, public interest organizations, and such other groups as the Secretaries deem suitable; and

(3) consult and cooperate with other government agencies, Federal, State, and local, and, to the extent appropriate, with foreign governments and international organizations.

Sec. 5. The Secretary of Commerce shall carry out that part of the study authorized in section 2 of this Act relating to foreign direct investment, and shall, among other things, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, magnitude, and rate of foreign direct investment activities in the United States;

(2) survey the reasons foreign firms are undertaking direct investment in the United States;

(3) identify the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets;

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[1] 15 U.S.C. 78b note.

(4) analyze the scope and significance of foreign direct investment in acquisitions and takeovers of existing American enterprises, the significance of such investments in the form of new facilities or joint ventures with American firms, and the effects thereof on domestic business competition;

(5) analyze the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors;

(6) analyze the effects of foreign direct investment on United States national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant American product markets;

(7) analyze the effect of foreign direct investment in terms of employment opportunities and practices and the activities and influence of foreign and American management executives employed by foreign firms;

(8) analyze the effect of Federal, regional, State, and local laws, rules, regulations, controls, and policies on foreign direct investment activities in the United States;

(9) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign direct investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(10) compare and contrast the foreign direct investment activities in the United States with the investment activities of American investors abroad and appraise the impact of such American activities abroad on the investment activities and policies of foreign firms in the United States;

(11) study the adequacy of information, disclosure, and reporting requirements and procedures;

(12) determine the effects of variations between accounting, financial reporting, and other business practices of American and foreign investors on foreign investment activities in the United States; and

(13) study and recommend means whereby information and statistics on foreign direct investment activities can be kept current.

Sec. 6. The Secretary of the Treasury shall carry out that part of the study authorized in section 2 of this Act relating to foreign portfolio investment, and shall, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, and magnitude of foreign portfolio investment activities in the United States;

(2) survey the reasons for foreign portfolio investment in the United States;

(3) identify the processes and mechanisms through which foreign portfolio investment is made in the United States, the financing methods used, and the effects of foreign portfolio investment on American financial markets;

(4) analyze the effects of foreign portfolio investment on the United States balance of payments and the United States international investment position;

(5) study and analyze the concentration and distribution of foreign portfolio investment in specific United States economic sectors;

(6) study the effect of Federal securities laws, rules, regulations, and policies on foreign portfolio investment activities in the United States;

(7) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign portfolio investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(8) compare the foreign portfolio investment activities in the United States with information available on the portfolio investment activities of American investors abroad;

(9) study adequacy of information, disclosures, and reporting requirements and procedures; and

(10) study and recommend means whereby information and statistics on foreign portfolio investment activities can be kept current.

POWERS

Sec. 7. (a) The Secretary of Commerce and the Secretary of the Treasury may each by regulation establish whatever rules each deems necessary to carry out each of his functions under this Act.

(b) Each such Secretary may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which such Secretary determines is germane to his functions in the foreign direct investment and foreign portfolio investment studies to be conducted pursuant to this Act; and

(2) to furnish under oath any report containing whatever information such Secretary determines is necessary to carry out his functions in such studies. Whenever an order under clause (2) of this subsection requires a person to produce information which can be specifically identified as being part of the records of its customers, the Secretary shall, upon being provided the names and addresses of such customers, send a notice to such customers that information from their records will be disclosed pursuant to this Act; *Provided,* That this requirement shall not apply when such person is directly involved in the ownership or management of assets for the customer as nominee, agent, partner, fiduciary, trustee, or in a similar relationship.

The authority of each Secretary under this subsection shall expire on the date provided under section 10 of this Act for the Secretary of Commerce and the Secretary of the Treasury to submit a full and complete report to the Congress.

(c) In addition to the Secretary of Commerce and the Secretary of the Treasury, the only individuals who may have access to information furnished under subsection (b)(2) are those sworn employees, including consultants, of the Department of Commerce or Department of the Treasury designated by the Secretary of either

such Department. Neither such Secretary nor any such employee may—

(1) use any information furnished under subsection (b)(2) except for analytical or statistical purposes with the United States Government; or

(2) publish, or make available to any other person in any manner, any such information in a manner that the information furnished under subsection (b)(2) by any person can be specifically identified, except for the purposes of a proceeding under section 8.

Such Secretaries may exchange any such information furnished under subsection (b)(2) in order to prevent any duplication or omission in the studies conducted by each such Secretary pursuant to this Act.

(d) Except for the requirement under subsection (b)(2), no agency of the United States or employee thereof may compel (1) the Secretary of Commerce or the Secretary of the Treasury, (2) any individual designated by either such Secretary under the first sentence of subsection (c), or (3) any person which maintained or furnished any report under subsection (b), to submit any such report or constituent part thereof to that agency or any other agency of the United States. Without the prior written consent of the person which maintained or furnished any report under subsection (b) and without the prior written consent of the customer, where the person maintained or furnished any such report which included information identifiable as being derived from the records of such customer, such report or any such constitiuent part may not be produced for any judicial or administrative proceeding, except for a proceeding under section 8(b) of this Act.

ENFORCEMENT

Sec. 8. (a) Whoever fails to furnish any information required pursuant to the authority of this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act may be assessed a civil penalty not exceeding $10,000 in a proceeding brought under subsection (b) of this section.

(b) Whenever it appears to either the Secretary of the Treasury or the Secretary of Commerce that any person has failed to furnish any information required pursuant to the provisions of this Act, whether required to be furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act, such Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule, regulation, order, or instruction, and upon a proper showing by such Secretary of the relevance to the purposes of the Act of such rule, regulation, order, or instruction, a permanent or temporary injunction or restraining order shall be granted without bond, and such person, may also be subject to the civil penalty provided in subsection (a) of this section if the judge finds that

such penalty is necessary to obtain compliance with such injunction or restraining order.

(c) Whoever willfully fails to submit any information required pursuant to this Act, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than one year or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

Sec. 9. (a) The Secretary of Commerce and the Secretary of the Treasury may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate to be fixed by the Secretaries concerned but not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services for the Department of Commerce or the Department of the Treasury in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(b) The Secretary of Commerce and the Secretary of the Treasury are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of any agency or instrumentality of the Federal Government in conjunction with the study authorized in this Act.

Sec. 10. The Secretary of Commerce and the Secretary of the Treasury shall submit to the Congress an interim report twelve months after the date of enactment of this Act, and not later than one and one-half years after enactment of this Act, a full and complete report of the findings made under the study authorized by this Act, together with such recommendations as they consider appropriate.

Sec. 11. There is authorized to be appropriated a sum not to exceed $3,000,000 to carry out the purposes of this Act. Any funds so appropriated shall remain available until expended.

b. Executive Order 11858, May 7, 1975, 40 F.R. 20263, as amended by Executive Order 12188, January 2, 1980, 45 F.R. 989

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Act of February 14, 1903, as amended (15 U.S.C. 1501 et seq.), section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. (a) There is hereby established the Committee on Foreign Investment in the United States (hereinafter referred to as the Committee). The Committee shall be composed of a representative, whose status is not below that of an Assistant Secretary, designated by each of the following:

(1) The Secretary of State.
(2) The Secretary of the Treasury.
(3) The Secretary of Defense.
(4) The Secretary of Commerce.
(5)[1] The United States Trade Representative.
(6)[2] The Chairman of the Council of Economic Advisors.

The representative of the Secretary of the Treasury shall be the chairman of the Committee. The chairman, as he deems appropriate, may invite representatives of other departments and agencies to participate from time to time in activities of the Committee.

(b) The Committee shall have primary continuing responsibility within the executive branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of U.S. policy on such investment. In fulfillment of this responsibility, the Committee shall:

(1) arrange for the preparation of analyses of trends and significant developments in foreign investments in the United States;

(2) provide guidance on arrangements with foreign governments for advance consultations on prospective major foreign governmental investments in the United States;

(3) review investments in the United States which, in the judgment of the Committee, might have major implications for U.S. national interests; and

(4) consider proposals for new legislation or regulations relating to foreign investment as may appear necessary.

(c) As the need arises, the Committee shall submit recommendations and analyses to the National Security Council and to the Economic Policy Board. It shall also arrange for the preparation and publication of periodic reports.

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[1] The U.S. Trade Representative was substituted for the Assistant to the President for Economic Affairs in this list by sec. 1-105(f)(1) of Executive Order 12188.

[2] The Chairman of the Council of Economic Advisors was substituted for the Executive Director of the Council on International Economic Policy in this list by sec. 1-105(f)(2) of Executive Order 12188.

Sec. 2. The Secretary of Commerce, with respect to the collection and use of data on foreign investment in the United States, shall provide, in particular, for the performance of the following activities.

(a) The obtainment, consolidation, and analysis of information on foreign investment in the United States;

(b) the improvement of procedures for the collection and dissemination of information on such foreign investment;

(c) the close observation of foreign investment in the United States;

(d) the preparation of reports and analyses of trends and of significant developments in appropriate categories of such investment;

(e) the compilation of data and preparation of evaluations of significant investment transactions; and

(f) the submission to the Committee of appropriate reports, analyses, data and recommendations relating to foreign investment in the United States, including recommendations as to how information on foreign investment can be kept current.

Sec. 3. The Secretary of the Treasury is authorized, without further approval of the President, to make reasonable use of the resources of the Exchange Stabilization Fund, in accordance with section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), to pay any of the expenses directly incurred by the Secretary of Commerce in the performance of the functions and activities provided by this order. This authority shall be in effect for one year, unless revoked prior thereto.

Sec. 4. All departments and agencies are directed to provide, to the extent permitted by law, such information and assistance as may be requested by the Committee or the Secretary of Commerce in carrying out their functions and activities under this order.

Sec. 5. Information which has been submitted or received in confidence shall not be publicly disclosed, except to the extent required by law; and such information shall be used by the Committee only for the purpose of carrying out the functions and activities prescribed by this order.

Sec. 6. Nothing in this order shall affect the data-gathering, regulatory, or enforcement authority of any existing department or agency over foreign investment, and the review of individual investments provided by this order shall not in any way supersede or prejudice any other process provided by law.

c. International Investment Survey Act of 1976 [1]

Text of Public Law 94-472 [S. 2839], 90 Stat. 2059, approved October 11, 1976, as amended by Public Law 95-381 [S. 2028], 92 Stat. 726, approved September 22, 1978; Public Law 96-72 [S. 737], 93 Stat. 503 at 536, approved September 29, 1979; Public Law 97-33 [S. 1104], 95 Stat. 170, approved August 7, 1981; and by Public Law 97-70 [S. 1687], 95 Stat. 1045, approved October 26, 1981

AN ACT To supplement the authority of the President to collect regular and periodic information on international investment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "International Investment Survey Act of 1976".

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress finds and declares that—

(1) the United States Government is presently authorized to collect limited amounts of information on United States investment abroad and foreign investment in the United States;

(2) international investment has increased rapidly within recent years;

(3) such investment significantly affects the economies of the United States and other nations;

(4) international efforts to obtain information on the activities of multinational enterprises and other international investors have accelerated recently;

(5) the potential consequences of international investment cannot be evaluated accurately because the United States Government lacks sufficient information on such investment and its actual or possible effects on the national security, commerce, employment, inflation, general welfare, and foreign policy of the United States;

(6) accurate and comprehensive information on international investment is needed by the Congress to develop an informed United States policy on such investment; and

(7) existing estimates of international investment, collected under existing legal authority, are limited in scope and are based on outdated statistical bases, reports, and information which are insufficient for policy formulation and decisionmaking.

(b) It is therefore the purpose of this Act to provide clear and unambiguous authority for the President to collect information on international investment and to provide analyses of such information to the Congress, the executive agencies, and the general public. It is the intent of the Congress that information which is collected

[1] 22 U.S.C. 3101-3108.

from the public under this Act be obtained with a minimum burden on business and other respondents and with no unnecessary duplication of effort, consistent with the national interest in obtaining comprehensive and reliable information on international investment.

(c) Nothing in this Act is intended to restrain or deter foreign investment in the United States or United States investment abroad.

DEFINITIONS

Sec. 3. As used in this Act, the term—

(1) "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and all territories and possessions of the United States;

(2) "foreign", when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(3) "person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency);

(4) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(5) "foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(6) "business enterprise" means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(7) "parent" means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(8) "affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an unincorporated business or an equivalent interest for an unincorporated business, including a branch;

(9) "international investment" means (A) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (B) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person;

(10) "direct investment" means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise; and

(11) "portfolio investment" means any international investment which is not direct investment.

AUTHORITY AND DUTIES

Sec. 4. (a) The President shall, to the extent he deems necessary and feasible—

(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment, including (but not limited to such information as may be necessary for computing and analyzing the United States balance of payments), the employment and taxes of United States parents and affiliates, and the international investment position of the United States;

(2) conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment which may have significant implications for the economic welfare and national security of the United States;

(3) study the adequacy of information, disclosure, and reporting requirements and procedures relating to international investment; recommend necessary improvements in information recording, collection, and retrieval and in statistical analysis and presentation relating to international investment; and report periodically to the Committees on Foreign Relations and Commerce of the Senate and the Committee on International Relations of the House of Representatives on national and international developments with respect to laws and regulations affecting international investment; and

(4) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection and to the benchmark surveys conducted pursuant to subsections (b) and (c).

(b) With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering[2] year 1980, a benchmark survey covering[2] year 1987, and benchmark surveys covering every fifth year thereafter. With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering[2] year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall,[3] among other things and to the extent he determines necessary and feasible—

(1) identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain (A) information on the balance sheets of parents and affiliates and related financial data, (B) income statements, includ-

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[2] The word "calendar", which formerly appeared at this point, was struck out by Public Law 97-70 (95 Stat. 1045).

[3] Subsec. (b) was amended and restated to this point by sec. 1 of Public Law 97-33 (95 Stat. 170). Former text had required a survey at least every 5 years for both U.S. direct investment abroad and foreign direct investment in the United States.

ing the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and

(5) determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

(c)(1) The President shall conduct a comprehensive benchmark survey of foreign portfolio investment in the United States at least once every five years and, for such purposes, shall (among other things and to the extent he determines necessary and feasible) determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of foreign private holders, diversification of holdings by economic sector, and holders of record.

(2) [4] In addition to the benchmark surveys conducted pursuant to paragraph (1), the President shall annually compile currently available data on United States portfolio investment abroad including items such as data on the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of private holders, diversification of holdings by economic sector, and holders of record. The President shall submit an analysis of such data to the Congress not later than the first day of July of each year.

(d) The President shall conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system, and shall submit to the Congress an interim report of his findings and conclusions not later than two years after the date of enactment of this Act and a final report of such findings and conclusions not later than three years after such date of enactment.[5]

(e) [6] The Secretary of Commerce shall prepare a report on the estimated cost of monitoring and compiling data on legislation enacted by the major trading partners of the United States, and such other foreign nations as the Secretary deems appropriate, which

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[4] Par. (2) was amended and restated by sec. 2 of Public Law 97-33 (95 Stat. 170). Former text required a survey of U.S. portfolio investment abroad to be submitted to Congress on Oct. 11, 1981, together with a report on the feasibility and desirability of conducting such surveys on a periodic basis.

[5] The final version of this report was originally due in 2 years. Sec. 2 of Public Law 95-381 added the requirement for an interim report and extended the due date for the final report to 3 years.

[6] Sec. 3 of Public Law 97-33 (95 Stat. 170) redesignated subsecs. (e) and (f) as subsecs. (f) and (g), respectively, and added a new subsec. (e).

regulates or restricts foreign inward investment in such foreign nations.

(f) [6] Activities shall be conducted so that information obtained pursuant to this Act shall be timely and useful in the development of policy with respect to international investment. Reporting and recordkeeping requirements imposed under this Act shall be designed in order to minimize costs to the extent feasible, consistent with effective enforcement and the compilation of information required by this Act. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(g) [6] In collecting information under this Act, the President shall give due regard to the costs incurred by persons supplying such information, as well as to the costs incurred by the Government, and shall insure that the information collected is only in such detail as is necessary to fulfill the stated purposes for which the information is being gathered.

RULES AND REGULATIONS; ACCESS TO INFORMATION

Sec. 5. (a) The authorities and responsibilities under this Act may be exercised through such rules and regulations as may be necessary to carry out the purposes of this Act.

(b) Rules or regulations issued pursuant to this Act may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential to carrying out the international investment surveys and studies to be conducted under this Act; and

(2) to furnish, under oath, any report containing information which is determined to be necessary to carry out the international investment surveys and studies conducted under this Act.

(c) Access to information obtained under subsection (b)(2) of this section shall be available only to officials or employees designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this Act. Subject to the limitation of paragraph (1) of this subsection, the President may authorize the exchange between agencies or officials designated by him of information furnished by any person under this Act as he deems necessary to carry out the purposes of this Act. Nothing in this section shall be construed to require any Federal agency to disclose to any official exercising authority under this Act any information or report collected under legal authority other than this Act where disclosure is prohibited by law. Information collected pursuant to subsection (b)(2) may be used only—

(1) for analytical or statistical purposes within the United States Government; or

(2) for the purpose of a proceding under subsection (d) of this section or under section 6 (b) or (c).

No official or employee designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this Act, may publish or make available to any other person any information collected pursuant to subsection

(b)(2) in a manner that the person who furnished the information can be specifically identified except as provided in this section. No person can compel the submission or disclosure of any report or constituent part thereof collected pursuant to this Act, or any copy of such report or constitutent part thereof, without the prior written consent of the person who maintained or furnished such report under subsection (b) and without prior written consent of the customer, where the person who maintained or furnished such report included information identifiable as being derived from the records of such customer.

(d) Any person who willfully violates subsection (c) shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law.

ENFORCEMENT

Sec. 6. (a) Whoever fails to furnish any information required under this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated under this Act, may be subject to a civil penalty not exceeding $10,000 in a proceeding brought under subsection (b) of this section.

(b) Whenever it appears that any person has failed to furnish any information required under this Act, whether required to be furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated under this Act, a civil action may be brought in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, and such court may enter a restraining order or a permanent or temporary injunction commanding such person to furnish such information or to comply with such rule, regulation, order, or instruction, as the case may be, or impose the civil penalty provided in subsection (a) of this section, or both.

(c) Whoever willfully fails to submit any information required under this Act, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule, regulation, order, or instruction promulgated under this Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both, and any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both.

USE OF EXPERTS AND ADMINISTRATIVE SUPPORT SERVICES

Sec. 7. (a) Any official designated by the President to carry out this Act may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsist-

ence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(b) Any official designated by the President to carry out this Act may use, on a reimbursable basis when appropriate (as determined by the President), the available services, equipment, personnel, and facilities of any agency or instrumentality of the United States Government.

CONSULTATIONS[7]

Sec. 8.[7] Officials performing functions pursuant to this Act shall secure balanced, diverse, and responsible views from qualified persons representing business, organized labor, and the academic community and may, where appropriate, create such independent public advisory committees as are necessary to carry out the purposes of this Act.

AUTHORIZATIONS

Sec. 9.[8] To carry out this Act, there are authorized to be appropriated $4,400,000 for the fiscal year ending September 30, 1980, $4,500,000 for the fiscal year ending September 30, 1981, $4,000,000 for the fiscal year ending September 30, 1982, and such sums as may be necessary for any subsequent fiscal years.

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[7] The words "AND REVIEWS" and subsec. (b) of sec. 8 were deleted by sec. 4 of Public Law 97-33 (95 Stat. 171). Subsec. (b) had directed the President to review the results of any studies and surveys conducted pursuant to this act and to report annually to Congress "on any trends or developments which may have national policy implications and which in the President's opinion warrant the review of the respective committees."

[8] The authorization figures for fiscal years 1980 and 1981 were added by sec. 23 of the Export Administration Act of 1979 (Public Law 96-72; 93 Stat. 536). The authorization for fiscal year 1982 and subsequent fiscal years was added by sec. 5 of Public Law 97-33 (95 Stat. 171). Authorizations for previous years included: fiscal year 1978—$1,000,000; fiscal year 1979—$4,000,000.

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d. Executive Order 11961, January 19, 1977, 42 F.R. 4321

ADMINISTRATION OF THE INTERNATIONAL INVESTMENT SURVEY ACT OF 1976

By virtue of the authority vested in me by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. All the functions vested in the President by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), hereinafter referred to as the Act, are hereby delegated to the Director of the Office of Management and Budget, hereinafter referred to as the Director. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

Sec. 2. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to portfolio investment shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(c) of the Act.

Sec. 3. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce, with respect to direct investment shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(b) of the Act.

Sec. 4. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Council on International Economic Policy shall perform the function of making periodic reports to the Committees of the Congress as set forth in Section 4(a)(3) of the Act.

e. Executive Order 11962, January 19, 1977, 42 F.R. 4323

Establishing the President's Advisory Board on International Investment

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 8(a) of the International Investment Survey Act of 1976 (90 Stat. 2064, 22 U.S.C. 3107), and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) it is hereby ordered as follows:

Section 1. (a) There is hereby established the President's Advisory Board on International Investment, hereinafter referred to as the Board which shall be composed of not more than fifteen members who shall be appointed by the President. Each member shall serve for a term limited to the remaining life of the Board as determined at the time of appointment.

(b) The President shall designate a Chairman and Vice Chairman from among the members.

Sec. 2. (a) Whenever requested, the Board shall advise the Executive Director of the Council on International Economic Policy, hereinafter referred to as the Executive Director, the Director of the Office of Management and Budget, and the heads of other agencies, with respect to matters relating to the performance of their functions under the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101).

(b) In making its recommendations, the Board shall give due consideration to the usefulness of data to be collected as compared to the burden imposed on those who are to furnish the data.

Sec. 3. (a) The Executive Director shall, to the extent permitted by law, provide administrative and staff services, support, and facilities for the Board.

(b) The Executive Director shall appoint an Executive Secretary for the Board.

Sec. 4. Members of the Board may be compensated for their services in accord with 5 U.S.C. 3109, and may, to the extent permitted by law, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons in the government service employed intermittently.

Sec. 5. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress which are applicable to the Board, shall be performed by the Executive Director in accordance with guidelines and procedures established by the Office of Management and Budget.

Sec. 6. The Board shall terminate on December 31, 1978, unless sooner extended.

6. Resolution With Respect to the World Food Situation

Considered and agreed to by the House [H. Res. 1399, 93d Congress] December 9, 1974.

RESOLUTION

Whereas the current world food supply, including reserves, is dangerously low, with millions of people in South Asia and in the African Sahel facing famine; and

Whereas higher prices for food, energy, and fertilizer, together with fertilizer shortages, are causing particular hardship to poor developing nations; and

Whereas rapid population growth aggravates food shortages, and declines in population growth rates historically have been associated with economic and social progress; and

Whereas the American people have a long and proud tradition of combating hunger at home and abroad; and

Whereas it is in the interest of the United States and of all other nations to overcome food shortages, which cause human suffering, breed economic and political instability, and raise food prices both at home and abroad; and

Whereas the world community has recognized the dimensions of the crisis by convening the World Population Conference and the World Food Conference this year; and

Whereas President Ford in his address to the 1974 United Nations General Assembly recognized the urgency of the world food crisis and pledged (1) substantially increased United States assistance to agricultural production programs in other countries, (2) United States support for an international system of food reserves, and (3) increased United States spending for food shipments to needy nations: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the United States should vigorously pursue efforts to help poor countries (A) increase agriculture production, especially through labor intensive, small farm agriculture, (B) promote economic and social development programs, and (C) assist in population programs, when requested, including continued encouragement of voluntary family planning; and

(2) increased food aid should be provided as needed to meet specific short-term emergencies; and

(3) planning should be undertaken immediately by appropriate Government agencies to enable the United States to provide the increased food aid, including plans to prevent any increased domestic inflation as a result of United States relief shipments; and

(4) all nations—including industrial and food-exporting countries, oil-exporting countries, and the developing countries themselves—should join in the effort to combat food shortages; and

(5) international agreement should be sought for a system of food reserves to meet food shortage emergencies and to provide insurance against unexpected shortfalls in food production, with costs to be equitably shared and farmers given firm safeguards against market price disruption from such a system; and

(6) the President should encourage reduction in domestic consumption of fertilizer for nonfarm purposes in order to increase fertilizer supplies for the production of food in this country and in the developing countries, and should undertake efforts to stimulate increased world fertilizer production both here and abroad.

7. Collection and Publication of Foreign Commerce and Trade Statistics

Sections 301–307, Title 13, U.S.C. as added by Public Law 87–826, approved Oct. 15, 1962, 76 Stat. 951–52, and amended by Public Law 93–618, [H.R. 10710], 88 Stat. 1978 at 2074, approved January 3, 1975; Public Law 96–39, [H.R. 4537], 93 Stat. 144 at 313, approved July 26, 1979; and by Public Law 96–275, [H.R. 6842], 94 Stat. 539, approved June 17, 1980

§ 301. Collection and publication.

(a)[1] The Secretary is authorized to collect information from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control, and from all persons engaged in trade between the United States and such noncontiguous areas and between those areas, or from the owners, or operators of carriers engaged in such foreign commerce or trade, and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, as he deems necessary or appropriate to enable him to foster, promote, develop, and further the commerce, domestic and foreign, of the United States and for other lawful purposes.

(b)[1] The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on quarterly and cumulative bases, statistics on United States imports for consumption and United States exports by country and by product. Statistics on United States imports shall be submitted in accordance with the Tariff Schedules of the United States Annotated and general statistical headnote 1 thereof, in detail as follows:

(1) net quantity;

(2) United States customs value;

(3) purchase price or its equivalent;

(4) equivalent of arm's length value;

(5) aggregate cost from port of exportation to United States port of entry;

(6) a United States port of entry value comprised of (5) plus (4), if applicable, or, if not applicable, (5) plus (3); and

(7) for transactions where (3) and (4) are equal, the total value of such transactions.

The data for paragraphs (1), (2), (3), (5), and (6) shall be reported separately for nonrelated and related party transactions, and shall also be reported as a total of all transactions.

(c)[1] In submitting any information under subsection (b) with respect to exports, the Secretary shall state separately from the total value of all exports—

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[1] The subsection designation "(a)" and new subsecs. (b), (c), and (d) were added by sec. 609(a) of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2074).

(1)(A) the value of agricultural commodities exported under the Agricultural Trade Development and Assistance Act of 1954, as amended; and

(B) the total amount of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the value of goods exported under the Foreign Assistance Act of 1961.

(d)[1] To assist the Secretary to carry out the provisions of subsections (b) and (c)—

(1) the Secretary of Agriculture shall furnish information to the Secretary concerning the value of agricultural commodities exported under provisions of the Agricultural Trade Development and Assistance Act of 1954, as amended, and the total amounts of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the Secretary of State shall furnish information to the Secretary concerning the value of goods exported under the provisions of the Foreign Assistance Act of 1961, as amended.

(e)[2] There shall be reported, on monthly and cumulative bases, for each item in the Tariff Schedules of the United States Annotated, the United States port of entry value (as determined under subsection (b)(6)). There shall be reported, on monthly and cumulative bases, the balance of international trade for the United States reflecting (1) the aggregate value of all United States imports as reported in accordance with the first sentence of this subsection, and (2) the aggregate value of all United States exports. The values and balance of trade required to be reported by this subsection shall be released no later than 48 hours before the release of any other government statistics concerning values of United States imports or United States balance of trade, or statistics from which such values or balance may be derived.

(f)[2] On or before January 1, 1981, and as often thereafter as may be necessary to reflect significant changes in rates, there shall be reported for each item of the Tariff Schedules of the United States Annotated, the ad valorem or ad valorem equivalent rate of duty which would have been required to be imposed on dutiable imports under that item, if the United States customs values of such imports were based on the United States port of entry value (as reported in accordance with the first sentence of subsection (e)) in order to collect the same amount of duties on imports under that item as are currently collected.

(g)[3] Shippers' Export Declarations (or any successor document), wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest.

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[2] Subsecs. (e) and (f) were added by sec. 1108(a) of the Trade Agreements Act of 1979 (Public Law 96-39; 93 Stat. 313). This amendment was effective Dec. 31, 1979.

[3] Subsec. (g) was added by sec. 1 of Public Law 96-275 (94 Stat. 539).

§ 302. Rules, regulations, and orders.

The Secretary may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this chapter. Any rules, regulations, or orders issued pursuant to this authority may be established in such form or manner, may contain such classifications or differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the Secretary are necessary or proper to effectuate the purpose of this chapter, or to prevent circumvention or evasion of any rule, regulation, or order issued hereunder. The Secretary may also provide by rule or regulation, for such confidentiality, publication, or disclosure, of information collected hereunder as he may deem necessary or appropriate in the public interest. Rules, regulations, and orders, or amendments thereto shall have the concurrence of the Secretary of the Treasury prior to promulgation.

§ 303. Secretary of Treasury functions.

To assist the Secretary to carry out the functions of this chapter, the Secretary of the Treasury shall collect information in the form and manner prescribed by the regulations issued pursuant to this chapter from persons engaged in foreign commerce or trade, other than by mail, and from the owners or operators of carriers.

§ 304. Filing export information, delayed filings, penalties for failure to file.

(a) The information or reports in connection with the exportation or transportation of cargo required to be filed by carriers with the Secretary of the Treasury under any rule, regulation, or order issued pursuant to this chapter may be filed after the departure of such carrier from the port or place of exportation or transportation, whether such departing carrier is destined directly to a foreign port or place or to a noncontiguous area, or proceeds by way of other ports or places of the United States, provided that a bond in an approved form in the penal sum of $1,000 is filed with the Secretary of the Treasury. The Secretary of Commerce may, by a rule, regulation, or order issued in conformity herewith, prescribe a maximum period after such departure during which the required information or reports may be filed. In the event any such information or report is not filed within such prescribed period, a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000 shall be exacted. Civil suit may be instituted in the name of the United States against the principal and surety for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.

(b) The Secretary may remit or mitigate any penalty incurred for violations of this section and regulations issued pursuant thereto if, in his opinion, they were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 305 of this title.

§ 305. Violations, penalties.

Any person, including the owners or operators of carriers, violating the provisions of this chapter, or any rule, regulation, or order issued thereunder, except as provided in section 304 above, shall be liable to a penalty not to exceed $1,000 in addition to any other penalty imposed by law. The amount of any such penalty shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

§ 306. Delegation of functions.

Subject to the concurrence of the head of the department or agency concerned, the Secretary may make such provisions as he shall deem appropriate, authorizing the performance by any officer, agency or employee of the United States Government departments or offices, or the governments of any areas over which the United States exercises sovereignty, jurisdiction, or control, of any function of the Secretary, contained in this chapter.

§ 307. Relationship to general census law.

The following sections only, 1, 2, 3, 4, 5, 6, 7, 11, 21, 22, 23, 24, 211, 212, 213, and 214, of chapters 1 through 7 of this title are applicable to this chapter.

8. Materials and Commodities

a. Strategic and Critical Materials Transaction Authorization Act of 1979

Public Law 96–175 [H.R. 595], 93 Stat. 1289, approved December 29, 1979

AN ACT To authorize certain transactions involving the acquisition and disposal of strategic and critical materials for the National Defense Stockpile.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Strategic and Critical Materials Transaction Authorization Act of 1979".

Sec. 2. There is authorized to be appropriated the sum of $237,000,000 for the acquisition of strategic and critical materials under section 6(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e). Before any acquisition using funds appropriated under the authorization of this section may be carried out, a list of the materials to be acquired shall be submitted to the Committees on Armed Services of the Senate and House of Representatives, and such acquisition may not then be carried out until the end of the 60-day period beginning on the date such list is received by such committees.

Sec. 3. The President is hereby authorized to dispose of materials determined to be excess to the current requirements of the National Defense Stockpile in the following quantities:

(1) 35,000 long tons of tin.

(2) 3,000,000 carats of industrial diamond stones.

(3) 5,000,000 troy ounces of silver.

Sec. 4. Any acquisition using funds appropriated under the authorization of section 2, and any disposal under the authority of section 3, shall be carried out in accordance with the provisions of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).

Sec. 5. The President, on behalf of the United States,[1] is authorized to contribute (from the amount of tin authorized to be disposed of under section 3(1)) up to 5,000 long tons of tin to the Tin Buffer Stock established under the Fifth International Tin Agreement. Upon the termination of such agreement in 1981, all proceeds generated from such contribution shall be remitted to the National Defense Stockpile Transaction Fund established by section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h).

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[1] The functions vested in the President by sec. 5 were delegated to the United States Trade Representative pursuant to Executive Order 12263 (Jan. 8, 1981, 46 F.R. 2315).

b. International Natural Rubber Agreement Appropriation Authorization

Public Law 96-271 [S. 2666], 94 Stat. 499, approved June 16, 1980

AN ACT To authorize appropriations for the International Natural Rubber Agreement for fiscal year 1981.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to meet the obligations of the United States as a member of the International Natural Rubber Organization established by the International Natural Rubber Agreement, there is authorized to be appropriated for the fiscal year 1981 $88,000,000 for the payment of contributions by the United States to the buffer stock account established by the agreement. Funds appropriated under this Act are authorized to remain available during the period in which the International Natural Rubber Agreement remains in effect with respect to the United States.

c. International Sugar Agreement, 1977, Implementation

Public Law 96-236 [H.R. 6029], 94 Stat. 336, approved April 22, 1980 [1] as amended by Public Law 97-446 [H.R. 4566], 96 Stat. 2329 at 2344, approved January 12, 1983

AN ACT Providing for the implementation of the International Sugar Agreement, 1977, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Definitions.

For purposes of this Act—

(1) The term "Agreement" means the International Sugar Agreement, 1977, signed at New York City on December 9, 1977.

(2) The term "sugar" has the same meaning as is given to such term in paragraph (12) of Article 2 of the Agreement.

(3) The term "entry" means entry, or withdrawal from warehouse, for consumption in the customs territory of the United States.

Sec. 2. Implementation of Agreement.

On and after the entering into force of the Agreement with respect to the United States, and for such period before January 1, 1985,[2] as the Agreement remains in force, the President may, in order to carry out and enforce the provisions of the Agreement—

(1) regulate the entry of sugar by appropriate means, including, but not limited to—

(A) the imposition of limitations on the entry of sugar which is the product of foreign countries, territories, or areas not members of the International Sugar Organization, and

(B) the prohibition of the entry of any shipment or quantity of sugar not accompanied by a valid certificate of contribution or such other documentation as may be required under the Agreement;

(2) require of appropriate persons the keeping of such records, statistics, and other information, and the submission of such reports, relating to the entry, distribution, prices, and consumption of sugar and alternative sweeteners as he may from time to time prescribe; and

(3) take such other action, and issue and enforce such rules or regulations, as he may consider necessary or appropriate in order to implement the rights and obligations of the United States under the Agreement.

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[1] 7 U.S.C. 3601-3606.

[2] Sec. 153 of Public Law 97-446 (96 Stat.) extended this date from Jan. 1, 1983 to Jan. 1, 1985.

Sec. 3. Delegation of Powers and Duties.

The President may exercise any power or duty conferred on him by this Act through such agencies or offices of the United States as he shall designate. Such agencies or offices shall issue such regulations as they determine are necessary to implement this Act.

Sec. 4. Criminal Offenses.

Any person who—

(1) knowingly fails to keep any information, or to submit any report, required under section 2;

(2) submits any report under section 2 knowing that the report or any part thereof is false; or

(3) knowingly violates any rule or regulation issued to carry out this Act;

is guilty of an offense and upon conviction thereof is punishable by a fine of not more than $1,000.

Sec. 5. Report to Congress.

The President shall submit to Congress, on or before May 1 and November 1 of each year, a report on the operation and effect of the Agreement during the immediately preceding six-month period. Unless otherwise published on a regular basis by an agency of the United States, the report shall contain, but not be limited to—

(1) information with respect to world and domestic sugar demand, supplies, and prices during the period concerned;

(2) projections with respect to world and domestic sugar demand, supplies, and prices; and

(3) a summary of the international and domestic actions taken during the period concerned under the Agreement and under domestic legislation to protect the interests of United States consumers and producers of sugar.

Sec. 6. Protection of Interests of United States Consumers.

The powers and duties conferred by sections 2 and 3 shall be exercised in the manner the President considers appropriate to protect the interest of United States consumers. If the President determines that there has been an unwarranted increase in the price of sugar due in whole or in part to the Agreement, or to market manipulation by two or more members of the International Sugar Organization, the President shall request the International Sugar Council or the Executive Committee to increase supplies of sugar available to world markets by suspending sugar export quotas or to take any other appropriate action, and, at the same time, shall report that determination to the Congress. If the International Sugar Council fails to take corrective action to remedy the situation within a reasonable time after such request, the President shall submit to the Congress such recommendations as he may consider appropriate to correct the situation. In the event that members of the International Sugar Organization involved in market manipulation which has resulted in price increases have failed to remedy the situation within a reasonable time after a request for remedy, the exercise of the authority set forth in section 2 shall be suspended until the President determines that effective market manipulation activities have ceased.

d. Executive Order 12224, July 1, 1980, 45 FR 45243

Implementation of the International Sugar Agreement

By the authority vested in me as President of the United States of America by an Act providing for the Implementation of the International Sugar Agreement, 1977, and for Other Purposes (Public Law 96–236; 94 Stat. 336) and Section 301 of Title 3 of the United Sates Code, it is hereby ordered as follows:

1–101. The functions vested in the President by Public Law 96–236 (94 Stat. 336) are delegated to the United States Trade Representative.

1–102. In carrying out the functions delegated to him, the United States Trade Representative shall consult with the Secretary of Agriculture and the Secretary of State. The United States Trade Representative may, with the consent of the head of another Executive agency, redelegate some or all of those functions to the head of such agency.

1–103. This Order is effective July 1, 1980.

e. International Coffee Agreement Act of 1980

Public Law 96-599 [H.R. 3637], 94 Stat. 3491, approved December 24, 1980 as amended by Public Law 97-276 [Continuing Appropriations, 1983; H.J. Res. 599], 96 Stat. 1186 at 1204, approved October 2, 1982; and by Public Law 97-446 [H.R. 4566], 96 Stat. 2329 at 2345, approved January 12, 1983

AN ACT To carry out the obligations of the United States under the International Coffee Agreement 1976, signed at New York on February 27, 1976, and entered into force for the United States on October 1, 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "International Coffee Agreement Act of 1980".

IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT 1976; PRESIDENTIAL POWERS AND DUTIES

Sec. 2. On and after the entry into force of the International Coffee Agreement 1976, and for such period prior to October 1, 1983 [1] as the agreement remains in effect, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement;

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

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[1] Sec. 161 of the Continuing Appropriations Act, 1983 (Public Law 97-276; 96 Stat. 1204), extended this date from Oct. 1, 1982, until "the expiration of this joint resolution" (Dec. 17, 1982). Subsequently, sec. 154 of Public Law 97-446 (96 Stat. 2345) extended the date until Oct. 1, 1983.

(4) to take such other action, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.

DEFINITION OF COFFEE

Sec. 3. As used in this Act, the term "coffee" means coffee as defined in article 3 of the International Coffee Agreement 1976.

DELEGATION OF PRESIDENTIAL POWERS AND DUTIES; PROTECTION OF INTERESTS OF UNITED STATES CONSUMERS; REMEDIAL ACTION

Sec. 4. The President may exercise any powers and duties conferred on him by sections 2 through 5 of this Act through such agency or officer as he shall direct. The powers and duties conferred by sections 2 through 5 of this Act shall be exercised in the manner the President considers appropriate to protect the interest of United States consumers. In the event the President determines that there has been an unwarranted increase in the price of coffee due in whole or in part to the International Coffee Agreement, or to market manipulation by two or more members of the International Coffee Organization, the President shall request the International Coffee Council or the Executive Board to increase supplies of coffee available to world markets by suspending coffee export quotas and to take any other appropriate action. At the same time he shall report his determination to the Congress. In the event the International Coffee Council has failed to take corrective action to remedy the situation within a reasonable time after such request the President shall submit to the Congress such recommendations as he may consider appropriate to correct the situation. In the event that members of the International Coffee Organization involved in market manipulation which has resulted in price increases have failed to remedy the situation within a reasonable time after a request for rememdy, the exercise of the authority set forth in section 2 of this Act shall be suspended until the President determines that effective market manipulation activities have ceased.

REPORT TO THE CONGRESS

Sec. 5. The President shall submit to the Congress an annual report on the International Coffee Agreement 1976. Such report shall contain full information on the operation of such agreement, including full information with respect to the general level of prices of coffee and matters pertaining to the transportation of coffee from exporting countries to the United States. The report shall also include a summary of the actions the United States and the International Coffee Organization have taken to protect the interest of United States consumers.

f. Executive Order 12297, March 12, 1981, 46 F.R. 16877

International Coffee Agreement 1976

By the authority vested in me as President by the International Coffee Agreement Act of 1980 (Public Law 96–599; 94 Stat. 3491) and Section 301 of Title 3 of the United States Code, and in order to carry out and enforce the International Coffee Agreement 1976, it is hereby ordered as follows:

Section 1. The functions vested in the President by Public Law 96–599 (94 Stat. 3491) are delegated to the United States Trade Representative.

Sec. 2. In carrying out the functions delegated to him, the United States Trade Representative shall consult with the Secretary of Agriculture and the Secretary of State. The United States Trade Representative may redelegate some or all of those functions to the head of another Executive agency with the consent of the head of such agency.

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H. FINANCIAL INSTITUTIONS

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1. Export-Import Bank

a. Export-Import Bank Act of 1945, as Amended

Public Law 79–173 [H.R. 3771], 59 Stat. 526, approved July 31, 1945, as amended by Public Law 79–282 [H.R. 4683], 59 Stat. 666, approved December 28, 1945; Public Law 80–89 [S. 993], 61 Stat. 130, approved June 9, 1947; Public Law 82–158 [S. 2006], 65 Stat. 367, approved October 3, 1951; Public Law 83–30 [H.R. 4465], 67 Stat. 28, approved May 21, 1953; Public Law 83–570 [S. 3589], 68 Stat. 677, approved August 9, 1954; Public Law 83–779 [H.R. 9730], 68 Stat. 1237, approved September 3, 1954; Public Law 85–55 [H.R. 4136], 71 Stat. 82, approved June 17, 1957; Public Law 85–424 [S. 3149], 72 Stat. 133, approved May 22, 1958; Public Law 87–311 [S. 2325], 75 Stat. 673, approved September 26, 1961; Public Law 88–101 [H.R. 3872], 77 Stat. 128, approved August 20, 1963; Public Law 89–348 [S. 2150], 79 Stat. 1312, approved November 8, 1965; Public Law 90–267 [S. 1155], 82 Stat. 47, approved March 13, 1968; Public Law 92–126 [S. 581], 86 Stat. 345, approved August 17, 1971; Public Law 93–331 [S.J. Res. 218], 88 Stat. 289, approved July 4, 1974; Public Law 93–374 [S.J. Res. 229], 88 Stat. 445, approved August 14, 1974; Public Law 93–425 [S.J. Res. 244], 88 Stat. 1166, approved September 30, 1974; Public Law 93–450 [S.J. Res. 251], 88 Stat. 1368, approved October 18, 1974; Public Law 93–646 [H.R. 15977], 88 Stat. 2333, approved January 4, 1975; Public Law 95–143 [H.R. 6415], 91 Stat. 1210, approved October 26, 1977; Public Law 95–407 [H.J. Res. 1140], 92 Stat. 882, approved September 30, 1978; Public Law 95–630 [H.R. 14279], 92 Stat. 3641 at 3724, approved November 10, 1978; Public Law 96–470 [H.R. 6686], 94 Stat. 2237 at 2245, approved October 19, 1980; and by Public Law 97–35 [H.R. 3982], 95 Stat. 357 at 431, approved August 13, 1981.

AN ACT To provide for increasing the lending authority of the Export-Import Bank of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "the Export-Import Bank Act of 1945."

Sec. 2. (a)(1)[1] There is hereby created a corporation with the name Export-Import Bank of the United States[2] which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the Bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, co-insure, reinsure against political and credit risks of loss;[3] to purchase, sell,

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[1] 12 U.S.C. 635. Subsec. (a)(1) amended by Act of Dec. 28, 1945 (59 Stat. 666), and by act of June 9, 1947 (61 Stat. 130). Par. (2) was added by Public Law 92–126, 85 Stat. 346, approved Aug. 17, 1971.

[2] The name of the Bank, "Export-Import Bank of Washington", was changed to "Export-Import Bank of the United States" by Public Law 90–267, 82 Stat. 47.

[3] This phrase was added by sec. 2 of Public Law 93–646 (88 Stat. 2333).

and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock, through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States;[3] and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the Bank. The Bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of title 44, United States Code, whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable.[3] The Bank is hereby authorized to use all of its assets and all moneys which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions. Net earnings of the Bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(2)[4] * * * [Repealed—1976]

(b)(1)[5] (A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services,[6] thereby contributing to the promotion and maintenance of high levels of employment and real income to the increased development of the productive resources of the United States. To meet this objective, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are competitive with the Government-supported rates and terms and other conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce govern-

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[4] Par. (2), which was added by Public Law 92-126, 85 Stat. 346, approved Aug. 17, 1971, was repealed by sec. 13 of Public Law 93-646 (88 Stat. 2333 at 2337) effective Sept. 30, 1976.

[5] As amended and restated by Public Law 92-126 (85 Stat. 345) and by sec. 3 of Public Law 93-646 (88 Stat. 2333).

[6] The words "manufactured goods, agricultural products and other goods and services" were substituted in lieu of the words "goods and related services" by sec. 1910 of Public Law 95-630 (92 Stat. 3726).

ment subsidized export financing.[7] The Bank shall, on an annual basis,[8] report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the annual report[8] required by this subparagraph. The Bank shall also include in the annual report[8] a description of each loan by the Bank involving the export of any product or service related to the production, refining, or transportation of any type of energy or the development of any energy resources with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

(B) It is further the policy of the United States that loans made by the Bank shall bear interest at rates determined by the Board of Directors of the Bank, taking into consideration the average cost of money to the Bank as well as the Bank's mandate to support United States exports at rates and on terms and conditions which are competitive with exports of other countries; that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank shall accord equal opportunity to export agents and managers, independent export firms, and small commercial banks in the formulation and implementation of its programs; that the Bank shall give due recognition to the policy stated in section 2(a) of the Small Business Act that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise" and that in furtherance of his policy the Board of Directors shall designate an officer of the Bank who shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns and who, among other duties, shall be responsible for advising small businessmen of the opportunities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns; that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness

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[7] The words to this point beginning with "and shall, in cooperation with * * *" were added by sec. 1 of Public Law 95-143 (91 Stat. 1210).

[8] This requirement was altered from a semiannual report to an annual report by sec. 210 of Public Law 96-470 (94 Stat. 2245).

of export opportunities among small agribusinesses and cooperatives;[9] that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.[10]

(C)[11] Consistent with the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and section 119 of the Foreign Assistance Act of 1961, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.

(2)[12] The Bank in the exercise of its functions shall not guarantee, insure, or extend credit, or participate in any extension of credit—

(A) in connection with the purchase or lease of any product by a Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961), or agency or national thereof, or

(B) in connection with the purchase or lease of any product by any other foreign country, or agency, or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Communist country (as so defined),

unless the President determines that guarantees, insurance, or extensions of credit in connection therewith to such Communist or such other country or agency or national thereof would be in the national interest. The President shall make a separate determina-

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[9] This phrase, from the point of the last semicolon, was added by sec. 1916 of Public law 95-630 (92 Stat. 3727).

[10] Sec. 1904 of Public Law 95-630 (92 Stat. 3724) struck out a phrase concerning human rights, which had been added by sec. 2 of Public Law 95-143 (91 Stat. 1210), and substituted the words to this point beginning with "and shall give particular emphasis to".

[11] Clause (C) was added by sec. 1907 of Public Law 95-630 (92 Stat. 3725).

[12] As amended and restated by Public Law 90-267 (82 Stat. 48) and by sec. 4 of Public Law 93-646 (88 Stat. 2333 at 2334).

tion with respect to each transaction in which the Bank would extend a loan to such Communist or such other country, or agency, or national thereof an amount of $50,000,000 or more. Any determination required under the first sentence of this paragraph shall be reported to the Congress not later than the earlier of thirty days following the date of such determination, or the date on which the Bank takes final action on a transaction which is the first transaction involving such country or agency or national after the date of enactment of the Export-Import Bank Amendments of 1974, unless a determination with respect to such country or agency or national has been made and reported prior to such date of enactment. Any determination required to be made under the second sentence of this paragraph shall be reported to the Congress not later than the earlier of thirty days following the date of such determination or the date on which the Bank takes final action on the transaction involved.

(3)[13] Except as provided by the fourth sentence of this paragraph,[14] no loan or financial guarantee or combination thereof (i) in an amount which equals or exceeds $100,000,000,[15] (ii) in an account which equals or exceeds $25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics, or (iii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. Such statement shall contain—

(A) a brief description of the purposes of the transaction, the identity of the party or parties requesting the loan or financial guarantee, the nature of the goods or services to be exported, and the use for which the goods or services are to be exported; and

(B) a full explanation of the reasons for Bank financing of the transaction, the amount of the loan to be provided by the Bank, the approximate rate and repayment terms at which such loan will be made available and the approximate amount of the financial guarantee.

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[13] Sec. 5 of Public Law 93-646 (88 Stat. 2333 at 2335) inserted par. (3) and redesignated pars. (3), (4), and (5) of the existing law as pars. (4), (5), and (6), respectively (these paragraphs were again redesignated as pars. (5), (6), and (7) by Public Law 95-143). Par. 3 was amended and restated by sec. 3(a) of Public Law 95-143 (91 Stat. 1210).

[14] This phrase was added by sec. 1902(1) of Public Law 95-630 (92 Stat. 3724).

[15] This figure was increased from $60,000,000 by sec. 1902(2) of Public Law 95-630 (92 Stat. 3724).

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.[16]

(4)[17] The Secretary of State shall report to the appropriate committees of Congress and to the Board of Directors of the Export-Import Bank if he determines that any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after the date of enactment of this paragraph, such safeguards or that any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after the date of enactment of this paragraph, any guarantee or other undertaking to the United States made in such agreement or that any country that is not a nuclear-weapons state (as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons) detonates, after the date of enactment of this paragraph, a nuclear explosive device. The Secretary shall specify which country or countries he has determined to have so acted, and the Board shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country unless the President determines that it is in the national interest for the Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country and such determination has been reported to the Congress not less than twenty-five days of continuous session of the Congress prior to the date of such approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the twenty-five-day period referred to in such sentence.

(5)[18] The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict declared or otherwise, with the Armed Forces of the United States, (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in clause (A).

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[16] This sentence was added by sec. 1902 of Public Law 95-630 (92 Stat. 3724).

[17] Sec. 3(b) of Public Law 95-143 (91 Stat. 1201) added par. (4) and redesignated pars. (4) through (6) as pars. (5) through (7), respectively.

[18] Sec. 2(b)(3) (subsequently redesignated as sec. 2(b)(5)) was amended and restated by Public Law 92-126, 85 Stat. 346, approved Aug. 17, 1971. Previously added by Public Law 90-267 (82 Stat. 48).

The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest, or (C) the purchase of any liquid metal fast breeder nuclear reactor or any nuclear fuel reprocessing facility.[19]

(6)[17] The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense articles and defense services to any country designated under section 4916 of the Internal Revenue Code of 1954 as an economically less developed country for purposes of the tax imposed by section 4911 of that Code. The prohibitions set forth in this paragraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arm races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress.

(7)[18] In no event shall the Bank have outstanding at any time in excess of 7½ per centum of the limitation imposed by section 7 of this Act for such guarantees, insurance, credits or participation in credits with respect to exports of defense articles and services to countries which, in the judgment of the Board of Directors of the Bank, are less developed.

(7)[20] The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with section 2(b)(1)(A) of this Act, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing, and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the Nation's balance of trade in deciding whether or not to provide assistance under this subsection. The Bank shall include in the

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[19] Clause (C) was added by sec. 3(c) of Public Law 95–143 (91 Stat. 1211).

[20] This par. (7), which should probably have been designated as par. (8), was added by sec. 1909 of Public Law 95–630 (92 Stat. 3725).

report to Congress under section 9(a) of this Act a description of the measures undertaken by it pursuant to this subsection.

(8)[21] In no event shall the Bank guarantee, insure, or extend credit or participate in the extension of credit (a) in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid; (b) in support of any export to the Government of the Republic of South Africa or its agencies unless the President determines that significant progress toward the elimination of apartheid has been made and transmits to the Congress a statement describing and explaining that determination; or (c) in support of any export to other purchases in the Republic of South Africa unless the United States Secretary of State certifies that the purchaser has endorsed and has proceeded toward the implementation of the following principles: nonsegregation of the races in all work facilities; equal and fair employment for all employees; equal pay for equal work for all employees; initiation and development of training programs to prepare nonwhite South Africans for supervisory, administrative, clerical, and technical jobs; increasing the number of nonwhites in management and supervisory positions; a willingness to engage in collective bargaining with labor unions; and improving the quality of life for employees in such areas as housing, transportation, schooling, recreation, and health facilities.

(c)(1)[22] The Bank is authorized and empowered to charge against the limitations imposed by section 7 of this Act, not less than 25 per centum of the related contractual liability which the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss. The aggregate amount of guarantees, insurance, coinsurance, and reinsurance which may be charged on this fractional basis pursuant to this section shall not exceed $25,000,000,000[23] outstanding at any one time. Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with the risks covered.

(2) The Bank may issue such guarantees, insurance, coinsurance, and reinsurance to or with exporters, insurance companies, financial institutions, or others, or groups thereof, and where appropriate may employ any of the same to act as its agent in the issuance and servicing of such guarantees, insurance, coinsurance, and reinsurance, and the adjustment of claims arising thereunder.

Sec. 3.[24] (a) The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide.

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[21] Par. (8), which probably should have been designated as par. (9), was added by sec. 1915 of Public Law 95–630 (92 Stat. 3727).

[22] As amended and restated by sec. 6 of Public Law 93–646 (88 Stat. 2333 at 2335).

[23] Sec. 1(a) of Public Law 88–101 (77 Stat. 128), changed the sum to "$2,000,000,000"; sec. 1(c) of Public Law 90–267 (82 Stat. 49) increased the sum to "$3,500,000,000"; sec. 1(b)(2) of Public Law 92–126 increased the sum to "$10,000,000,000"; sec. 6 of Public Law 93–646 (88 Stat. 2333 at 2336) increased the sum to $20,000,000,000; and sec. 1903 of Public Law 95–630 (92 Stat. 3724) increased the sum to $25,000,000,000.

[24] 12 U.S.C. 635a, as amended by act of Aug. 9, 1954 (68 Stat. 677) and by Public Law 90–267, 82 Stat. 49, Mar. 13, 1968.

(b) There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall receive a salary at the rate of $40,000 [25] per annum, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall receive a salary at the rate of $38,000 [26] per annum, who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(c) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate. Of the five members of the Board, not more than three shall be members of any one political party. Each director, other than the President of the Export-Import Bank and the Vice President of the Export-Import Bank, shall receive a salary at the rate of $38,000 [26] per annum. Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office. Terms of the directors shall be at the pleasure of the President of the United States, and the directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe. A majority of the Board of Directors shall constitute a quorum. The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(d) There shall be an Advisory Committee of nine members, appointed by the Board of Directors on the recommendation of the President of the Bank, who shall be broadly representative of production, commerce, finance, agriculture, and labor. The Advisory Committee shall meet one or more times per year, on the call of the President of the Bank, to advise with the Bank on its program. Members, not otherwise in the regular full-time employ of the United States, may be compensated at rates not exceeding the per diem equivalent of the rate for grade 18 of the General Schedule (5 U.S.C. 5332) for each day spent in travel or attendance at meetings of the Committee, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, in-

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[25] Pursuant to 5 U.S.C. 5314(41), the President of the Bank receives a salary according to level III of the Executive Schedule. Executive Order 12387, Oct. 8, 1982, raised the salary of level III to $70,000. (However, notwithstanding this rate, the maximum rate payable for level III is $59,500.)

[26] Pursuant to 5 U.S.C. 5315 (49) and (56), the First Vice President of the Bank and Members, Board of Directors of the Bank receive a salary according to level IV of the Executive Schedule. Executive Order 12387, Oct. 8, 1982, raised the salary of level IV to $67,200. (However, notwithstanding this rate, the maximum rate payable for level IV is $58,500.)

cluding per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

(e) No director, officer, attorney, agent, or employee of the bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his personal interests, or the interests of any corporation, partnership, or association in which he is directly or indirectly personally interested.

Sec. 4.[27] The Export-Import Bank of the United States shall have a capital stock of $1,000,000,000 subscribed by the United States. Payments for $1,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the common stock heretofore issued by the Bank and purchased by the United States. Payment for $174,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the preferred stock heretofore issued by the Bank and purchased by the Reconstruction Finance Corporation. Payment for the $825,000,000 balance of such capital stock shall be subject to call at any time in whole or in part by the Board of Directors of the Bank. For the purpose of making payments of such balance, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this section of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions of the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as he may designate from time to time to the extent of the common and preferred stock surrendered and other payments made for the capital stock of the Bank under this section.

Sec. 5.[28] (a) The Secretary of the Treasury shall pay to the Reconstruction Finance Corporation the par value of the preferred stock upon its surrender to the Bank for cancellation. For the purpose of making such payments to the Reconstruction Finance Corporation the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this subsection to the Reconstruction Finance Corporation shall be treated as public-debt transactions of the United States.

(b) Any dividends on the preferred stock accumulated and unpaid to the date of its surrender for cancellations shall be paid to the Reconstruction Finance Corporation by the Bank.

Sec. 6.[29] The Export-Import Bank of the United States is authorized to issue from time to time for purchase by the Secretary of the

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[27] 12 U.S.C. 635b. Public Law 90-267 (82 Stat. 47), changed the name of the Bank to Export-Import Bank of the United States.

[28] 12 U.S.C. 635c.

[29] 12 U.S.C. 635d. The second and third sentences were added by Public Law 80-89 (61 Stat. 131). Public Law 82-158 (65 Stat. 637), further amended the section; Public Law 83-570 (68 Stat.

Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed $6,000,000,000. Such obligations shall be redeemable at the option of the Bank before maturity in such manner as may be stipulated in such obligations and shall have such maturity as may be determined by the Board of Directors of the Bank with the approval of the Secretary of the Treasury. Each such Bank obligation issued to the Treasury after the enactment of the Export-Import Bank Amendments of 1974 shall bear interest at a rate not less than the current average yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation of the Bank as determined by the Secretary of the Treasury. The Secretary of the Treasury is hereby authorized and directed to purchase any obligations of the Bank issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this section of the purchase price of such obligations of the Bank and repayments thereof by the Bank shall be treated as public-debt transactions of the United States.

Sec. 7. (a)[30] (1)[31] The Export-Import Bank of the United States shall not have outstanding at any one time loans, guaranties, and

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678), substituted a new debt limit of $4,000,000; Public Law 85-425 (72 Stat. 133), raised that limit to $6,000,000. The third sentence was revised by sec. 7 of Public Law 93-646 (88 Stat. 2333 at 2336).

[30] 12 U.S.C. 635e. Public Law 82-158 (65 Stat. 367), raised the limit on the aggregate amount to 4½ times the authorized capital stock of the bank. The words "and insurance" were added by Public Law 83-30 (67 Stat. 28). Public Law 83-570 (68 Stat. 578), raised the aggregate amount to $5,000,000,000; Public Law 85-424 (72 Stat. 133) increased the amount to $7,000,000,000; Public Law 88-101 (77 Stat. 128), increased the amount to $9,000,000,000; Public Law 90-267 (82 Stat. 49), increased the amount to $13,500,000,000; and Public Law 92-126 (85 Stat. 345), increased the amount to $20,000,000,000; Public Law 93-646 (88 Stat. 2333) increased the amount to $25,000,000,000; and sec. 1905 of Public Law 95-630 (92 Stat. 3725) increased the amount to $40,000,000,000. Sec. 7(b) was added by sec. 8 of Public Law 93-646.

[31] Sec. 381(a) of Public Law 97-35 (Omnibus Budget Reconciliation Act; 95 Stat. 431) designated subsec. (a) as subsec. (a)(1) and added a new par. (2):

Appropriations for the Export-Import Bank during fiscal year 1983 are included in the Further Continuing Appropriations Act, 1983 (Public Law 97-377). Under the terms of this Act, appropriations are set at the rates and conditions provided in Public Law 97-121, Foreign Assistance Appropriations Act of 1982, except for certain programs. The exceptions to Public Law 97-121 are stated in the Further Continuing Appropriations Act, 1983, which provides: "and not to exceed $4,400,000,000 of gross obligations for the principal amount of direct loans and $9,000,000,000 of total commitments to guarantee loans under 'Export-Import Bank of the United States'".

Provisions contained in the FA Appropriations Act, 1982, concerning the Export-Import Bank include the following:

"Sec. 520. None of the funds appropriated or otherwise made available by this Act to the Export-Import Bank and funds appropriated by this Act for direct foreign assistance may be obligated for any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed or is being sought by any other government for prosecution for any war crime or an act of international terriorism, unless the President finds that the national security requires otherwise.

"Sec. 521. None of the funds appropriated or made available pursuant to this Act for direct assistance and none of the funds otherwise made available pursuant to this Act to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: *Provided*, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity."

insurance in an aggregate amount in excess of $40,000,000,000. All spending authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.[32]

(2)[31] Within the limits of funds and borrowing authority available to the Bank pursuant to this Act, gross obligations for the principal amount of direct loans authorized by the Bank during fiscal years 1982 and 1983 shall not exceed $10,478,000,000, of which amount $5,065,000,000 is designated for fiscal year 1982 and $5,413,000,000 is designated for fiscal year 1983.

(b) After the date of enactment of the Export-Import Bank Amendments of 1974, the Bank shall not approve any loans or financial guarantees, or combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000. No such loan or financial guarantee, or combination thereof, shall be for the purchase, lease, or procurement of any product or service for production (including processing and distribution) of fossil fuel energy resources. Not more than $40,000,000 of such aggregate amount shall be for the purchase, lease, or procurement of any product or service which involves research or exploration of fossil fuel energy resources. The President may establish a limitation in excess of $300,000,000 if he determines that such higher limitation is in the national interest and if he reports such determination to the Congress together with the reasons therefor, including the amount of such proposed increase which would be available for the export of products and services for research, exploration, and production (including processing and distribution) of fossil fuel energy resources in the Union of Soviet Socialist Republics, and if, after the receipt of such report together with the reasons, the Congress adopts a concurrent resolution approving such determination.

Sec. 8.[33] The Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 1983, but the provisions of this section shall not be construed as preventing the Bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date, or from issuing either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes

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[32] This sentence was added by sec. 1914 of Public Law 95–630 (92 Stat. 3727).

[33] 12 U.S.C. 635f. As amended and restated by the act of June 9, 1947 (61 Stat. 130); the date was revised to "June 30, 1958" by Public Law 82–158 (65 Stat. 367); the date changed to "June 30, 1968" with Public Law 88–101 (77 Stat. 128), and to "June 30, 1973" with Public Law 90–267 (82 Stat. 49). Public Law 92–126 (85 Stat. 345) changed the date to "June 30, 1974" and added the words "or any other purchasers." The date was changed successively to "July 30," "September 30," "October 15, 1974," "November 15, 1974," "June 30, 1978," "September 30, 1978," December 31, 1978" and "September 30, 1983" by Public Law 93–331 (88 Stat. 289), Public Law 93–374 (88 Stat. 445), Public Law 93–425 (88 Stat. 1166), Public Law 93–450 (88 Stat. 1368), and Public Law 93–646 (88 Stat. 2333), Public Law 95–143 (91 Stat. 1211), Public Law 95–407 (92 Stat. 882), and Public Law 95–630 (92 Stat. 3725), respectively.

of orderly liquidation, including the administration of its assets and the collection of any obligations held by the Bank.

Sec. 9. (a)[34] The Export-Import Bank of the United States shall transmit to the Congress annually a complete and detailed report of its operations. The report shall be as of the close of business on the last day of each fiscal year.

(b)[35] The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 501 of the Nuclear Non-Proliferation Act of 1978, and section 119 of the Foreign Assistance Act of 1961, as required by section 2(b)(1)(C) of this Act.

Sec. 10. Section 9 of the Act of January 31, 1935 (49 Stat. 4, ch. 2), as amended, is repealed.

Sec. 11.[36] Notwithstanding the provisions of section 955 of title 18, United States Code, any person, including any individual, partnership, corporation, or association, may act for or participate with the Export-Import Bank of the United States in any operation or transaction, or may acquire any obligation issued in connection with any operation or transaction, engaged in by the Bank.

Sec. 12.[37] The Export-Import Bank of the United States created hereby shall by virtue of this Act succeed to all of the rights and assume all of the liabilities of the Export-Import Bank of Washington, a District of Columbia corporation, and any outstanding capital stock of the District of Columbia corporation shall be deemed to have been issued by and shall be capital stock of the corporation created by this Act and all of the personnel, property, records, funds (including all unexpended balances of appropriations, allocations, or other funds now available), assets, contracts, obligations, and liabilities of the District of Columbia corporation are hereby transferred to, accepted, and assumed by the corporation created by this Act without the necessity of any act or acts on the part of the corporation created by this Act or of the District of Columbia corporation, their officers, employees, or agents or of any other department or agency of the United States to carry out the purposes hereof and it shall be unnecessary to take any further action to effect the dissolution or liquidation of Export-Import Bank of Washington, a District of Columbia corporation. The members of the Board of Directors of the District of Columbia corporation, appointed pursuant to the provisions of the Export-Import Bank Act of 1945, shall, during the unexpired portion of the terms for which they were appointed, continue in office as members of the Board of Directors of the corporation created by this Act.

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[34] 12 U.S.C. 635g. Sec. 10 of Public Law 93-646 (88 Stat. 2333 at 2336) changed the reporting requirements from semiannual to annual to be completed as of the end of each fiscal year instead of June 30 and Dec. 31 of each year.

[35] Subsec. (b) was added by sec. 10 of Public Law 93-646 (88 Stat. 2333 at 2337). The second sentence in subsec. (b) was added by sec. 1907(b) of Public Law 95-630 (92 Stat. 3725).

[36] 12 U.S.C. 635h. As amended and restated by Public Law 83-779 (68 Stat. 112), Public Law 90-267 changed the name of the bank to "Export-Import Bank of the United States."

[37] 12 U.S.C. 635i. Sec. 12 was added by sec. 4 of Public Law 80-89 (61 Stat. 131).

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b. Export-Import Bank Act Amendments of 1978

Partial text of Public Law 95–630 [H.R. 14279], 92 Stat. 3641 and 3724, approved November 10, 1978

AN ACT To extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Financial Institutions Regulatory and Interest Rate Control Act of 1978".

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TITLE XIX—EXPORT-IMPORT BANK ACT AMENDMENTS

Sec. 1901. That this title may be cited as the "Export-Import Bank Act Amendments of 1978".

NOTE.—Except for the sections included below, title XIX of this Act contained amendments to the Export-Import Bank Act of 1945.

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EXPORT CREDIT COMPETITION

Sec. 1908. (a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations.

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Sec. 1911. The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing

demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection, the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture and employment.

Sec. 1912. (a)(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, he shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) The Secretary of the Treasury shall only issue such authorization to the Banks to provide guarantees, insurance and credits to competing United States sellers, if he determines that:

(1) the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale, and

(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitive financing.

(c) Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however,* That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended.

Sec. 1913. No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled "Protection of the Environment" which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities.

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Sec. 1917. This title shall take effect upon enactment.

c. Negotiations on Official Export Financing

Partial text of Public Law 97-35 [Omnibus Budget Reconciliation Act; H.R. 3982], 95 Stat. 357 at 432, approved August 13, 1981

AN ACT To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

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TITLE III—BANKING, HOUSING, AND RELATED PROGRAMS

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SUBTITLE B—BANKING AND RELATED PROGRAMS

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EXPORT-IMPORT BANK OF THE UNITED STATES

Sec. 381. (a) * * *

(b) On or before December 15, 1981, the Secretary of the Treasury shall transmit a report to both Houses of the Congress regarding the status of negotiations within the Organization for Economic Cooperation and Development on improving the International Arrangement on Guidelines for Officially Supported Export Credits and on the status of any other mulitilateral or bilateral negotiations or discussions for the purpose of improving any other arrangements, standstills, minutes, and practices involving official export financing in which the United States participates. Such report shall include—

(1) an assessment of the progress, if any, that has been made in these negotiations, and of the prospects for a successful conclusion to these negotiations within a reasonable time; and

(2) a recommendation by the Secretary of the Treasury as to whether the Congress, in order to improve the prospects for a successful conclusion to these negotiations, should enact legislation for the purpose of enhancing the ability of the Export-Import Bank of the United States to offer or support export credit fully competitive with the subsidized official export credit offered or supported by other governments.

d. Executive Order 12166, October 19, 1979, 44 F.R. 60971

EXPORT-IMPORT BANK

By the authority vested in me as President of the United States of America by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. The function vested in the President by section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B)), is delegated to the Secretary of State. That function is the authority to determine that a denial by the Export-Import Bank of an application for credit would be in the national interest, where such action could clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights.

1-102. Before making such a determination, the Secretary of State shall consult with the Secretary of Commerce, and the heads of other interested Executive agencies.

1-103. In accord with Section 2(b)(1)(B) of that Act, only in those cases where the Secretary of State has made such a determination should the Export-Import Bank deny an application for credit for nonfinancial or noncommercial considerations.

2. Export Expansion

a. Public Law 90–390 [H.R. 16162], 82 Stat. 296, approved July 7, 1968 [1]

AN ACT To enable the Export-Import Bank of the United States to approve extension of certain loans, guarantees, and insurance in connection with exports from the United States in order to improve the balance of payments and foster the long-term commercial interests of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) It is the policy of the Congress that the Export-Import Bank of the United States should facilitate through loans, guarantees, and insurance (including coinsurance and reinsurance) those export transactions which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States.

(b) The Bank shall specially designate loans, guarantees, and insurance on the books of the Bank made under authority of this Act. In connection with guarantees and insurance, not less than 25 per centum of the related contractual liability of the Bank shall be taken into account for the purpose of applying the limitation imposed by section 7 of the Export-Import Bank Act of 1945, as amended; but the full amount of the related contractual liability of such guarantees and insurance shall be taken into account for the purpose of applying the limitation in section 2(c)(1) of that Act, concerning the amount of guarantees and insurance the Bank may have outstanding at any one time thereunder. The aggregate amount of loans plus 25 per centum of the contractual liability of guarantees and insurance outstanding at any one time under this Act shall not exceed $500,000,000.

(c) [2] * * * [Repealed—1980]

Sec. 2. In the event of any losses, as determined by the Board of Directors of the Bank, incurred on loans, guarantees, and insurance extended under this Act, the first $100,000,000 of such losses shall be borne by the Bank; the second $100,000,000 of such losses shall be borne by the Secretary of the Treasury; and any losses in excess thereof shall be borne by the Bank. Reimbursement of the Bank by the Secretary of the Treasury of the amount of losses which are to be borne by the Secretary of the Treasury as aforesaid shall be from funds made available pursuant to section 3 of this Act. All guarantees and insurance issued by the Bank shall be con-

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[1] 12 U.S.C. 635j–635n.

[2] Subsec. (c), which had required the Board of Directors of the Bank to submit a quarterly report to Congress on all actions taken under authority of this act, was repealed by sec. 115 of Public Law 96–470 (94 Stat. 2240).

sidered contingent obligations backed by the full faith and credit of the Government of the United States of America.

Sec. 3. There are hereby authorized to be appropriated to the Secretary of the Treasury without fiscal year limitation $100,000,000 to cover the amount of any losses which are to be borne by the Secretary of the Treasury as provided in section 2 hereof.

Sec. 4. Nothing in this Act shall be construed as a limitation on the powers of the Bank under the Export-Import Bank Act of 1945, as amended; and except as to the standard of reasonable assurance of repayment required under section 2(b)(1) of that Act, all loans, guarantees, and insurance extended hereunder shall be subject to the provisions of said Export-Import Bank Act of 1945, as amended, and to the policies of the Bank with respect to terms of repayment, interest rates, fees, and premiums applicable to loans, guarantees, and insurance extended under that Act.

Sec. 5. The Bank shall not extend loans, guarantees, or insurance under this Act in connection with the sale of defense articles or defense services.

b. Executive Order 11420, July 31, 1968, 33 F.R. 10997, 3 CFR, 1966–70 Comp., p. 739

ESTABLISHING THE EXPORT EXPANSION ADVISORY COMMITTEE

Whereas foreign trade is an essential and continuing element in sustaining the growth, strength, and prosperity of our economy, contributes to the improvement of our balance of payments, and fosters the long-term commercial interest of the United States; and

Whereas, on March 20, 1968, I requested the Congress to empower the Export-Import Bank of the United States to use up to $500,000,000 of its loan, guarantee, and insurance authority to finance a broadened program to sell American goods in foreign markets; and

Whereas the Congress has authorized the Bank to extend loans, guarantees, and insurance which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States; and

Whereas it is desirable and appropriate that guidance concerning the commercial interests and the balance of payments objectives of the United States be provided to the Board of Directors of the Bank in the use of such loan, guarantee, and insurance authority allocated to finance export expansion, and I have stated that I would establish an Export Expansion Advisory Committee to provide such guidance to the Board of Directors of the Bank:

Now, therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

Section 1. Establishment of Advisory Committee. (a) There is hereby established the Export Expansion Advisory Committee (hereinafter referred to as "the Committee").

(b) The Committee shall be composed of the following members: the Secretary of Commerce, who shall be Chairman of the Committee, the Secretary of the Treasury, the Secretary of State, and the President and Chairman of the Board of the Export-Import Bank of the United States.

Sec. 2. Functions of the Committee. The Committee shall review and make recommendations concerning applications and proposals for loans, guarantees, and insurance to be charged against allocations made to finance export expansion and shall provide guidance to the Board of Directors of the Bank concerning the use of such allocations with the view to fostering the foreign trade and long-term commercial interest of the United States.

Sec. 3. Construction. Nothing in this order shall be construed to abrogate, modify, or restrict any function vested by law in, or as-

signed pursuant to law to, any Federal agency, or any officer thereof or to any Federal interagency council or committee. As used herein the term "any Federal agency" includes any executive department and any other executive agency.

3. Bretton Woods Agreements Act, as amended [1]

Public Law 79–171 [H.R. 3314], 59 Stat. 512, approved July 31, 1945, as amended by Public Law 80–472 [S. 2202], 62 Stat. 137, approved April 3, 1948; Public Law 81–142 [H.R. 4332], 63 Stat. 298, approved June 29, 1949; Public Law 82–165 [H.R. 5113], 65 Stat. 373, approved October 10, 1951; Reorganization Plan No. 7 of 1953, August 1, 1953, 18 F.R. 4541, 67 Stat. 639; Public Law 83–570 [S. 3589], 68 Stat. 677, approved August 9, 1954; Public Law 86–48 [S. 1094], 73 Stat. 80, approved June 17, 1959; Public Law 87–490 [H.R. 10162], 76 Stat. 105, approved June 19, 1962; Public Law 88–178 [H.R. 7405], 77 Stat. 334, approved November 13, 1963; Public Law 89–31 [H.R. 6497], 79 Stat. 119, approved June 2, 1965; Public Law 89–126 [S. 1742], 79 Stat. 519, approved August 14, 1965; Public Law 91–599 [H.R. 18306], 84 Stat. 1657, approved December 30, 1970; Public Law 93–94 [S. 1887] 87 Stat. 314, approved August 15, 1973; Public Law 94–564 [H.R 13955], 90 Stat. 2660, approved October 19, 1976; Public Law 95–118 [H.R. 5262], 91 Stat. 1067, approved October 3, 1977; Public Law 95–147 [H.R. 5675], 91 Stat. 1227 at 1228, approved October 28, 1977; Public Law 95–435 [H.R. 9214], 92 Stat. 1051, approved October 10, 1978; Public Law 96–389, [S. 2271], 94 Stat. 1551, approved October 7, 1980; and by Public Law 97–35 [H.R. 3982], 95 Stat. 357 at 740 and 746, approved August 13, 1981.

AN ACT To provide for the participation of the United States in the International Monetary Fund and the International Bank for Reconstruction and Development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Bretton Woods Agreements Act."

ACCEPTANCE OF MEMBERSHIP

Sec. 2. The President is hereby authorized to accept membership for the United States in the International Monetary Fund (hereinafter referred to as the "Fund"), and in the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), provided for by the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State.

APPOINTMENT OF GOVERNORS, EXECUTIVE DIRECTORS, AND ALTERNATES

Sec. 3. [2] (a) The President, by and with the advice and consent of the Senate, shall appoint a governor of the Fund who shall also serve as governor of the Bank, and an executive director of the Fund and an executive director of the Bank. The executive directors so appointed shall also serve provisional executive directors of

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[1] 22 U.S.C. 286–286k–2.

[2] See sec. 3 of the International Finance Corporation Act, page 398 of the text. See sec. 3 of the International Development Association Act, page 412 of the text.

the Fund and the Bank for the purposes of the respective Articles of Agreement. The term of office for the governor of the Fund and of the Bank shall be five years. The term of office for the executive directors shall be two years, but the executive directors shall remain in office until their successors have been appointed.

(b) The President, by and with the advice and consent of the Senate, shall appoint an alternate for the governor of the fund and an alternate for the governor of the Bank.[3] The President, by and with the advice and consent of the Senate, shall appoint an alternate for each of the executive directors. The alternate for each executive director shall be appointed from among individuals recommended to the President by the executive director. The terms of office for alternates for the governor and the executive directors shall be the same as the terms specified in subsection (a) for the governor and executive directors.

(c)[4] Should the provisions of Schedule D of the Articles of Agreement of the Fund apply, the Governor of the Fund shall also serve as councillor, shall designate an alternate for the councillor, and may designate associates.

(d)[4](1)[5] No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor, executive director, councillor, alternate, or associate.

(2)[5] The United States executive director of the Fund shall not be compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code. The United States alternate executive director of the Fund shall not be compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3)[5] The Secretary of the Treasury shall instruct the United States executive director of the Fund to present to the Fund's Executive Board a comprehensive set of proposals, consistent with maintaining high levels of competence of Fund personnel and consistent with the Articles of Agreement, with the objective of assuring that salaries and other compensation accorded Fund employees do not exceed those received by persons filling similar levels of responsibility within national government service or private industry. The Secretary shall report these proposals together with any measures adopted by the Fund's Executive Board to the Congress prior to February 1, 1979.

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[3] The words "and an alternate for the governor of the Bank" were substituted by Public Law 93–94 (87 Stat. 314), for the words "who shall also serve as alternate for the governor of the bank".

[4] Upon entry into force on Apr. 1, 1978 of the amendments to the Articles of Agreement to the IMF, subsecs. (c) and (d), as provided for in sec. 2 of Public Law 94–564, became effective. The old subsec. (c) language which was struck was essentially the same as the new subsec. (d)(1) but without references to the councillor or associate.

[5] Sec. 2 of Public Law 95–435 (92 Stat. 1051) added the paragraph designation "(1)" and added pars. (2) and (3).

Section 1(a) and 3(a) of Reorganization Plan No. 4 of 1965, effective July 27, 1965, 30 F.R. 9353, abolished the Council and functions, with the President acquiring the duties. Subsequently Executive Order 11269, as amended (on page 395), re-established the National Advisory Council on International Monetary and Financial Policies under the executive branch.

The text of the reporting requirement of Chapter 3 of Public Law 91-599 (84 Stat. 1658), approved December 30, 1970, is observed in practice by the executive office. It reads as follows:

"§ 31. Annual report

"The National Advisory Council on International Monetary and Financial Policies shall include in its annual report to the Congress (1) a statement with respect to each loan approved and outstanding, made by the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, and the Asian Development Bank, including an evaluation of new loans made by said organization and a progress report of the project covered by each loan, and a discussion of how each loan will benefit the people of the recipient country, and (2) a statement on steps taken jointly and individually by member countries of the Inter-American Development Bank to restrain their military expenditures, and to preserve and strengthen free and democratic institutions."

Sec. 4.[6] (a) In order to coordinate the policies and operations of the representatives of the United States on the Fund and the Bank and of all agencies of the Government which make or participate in making foreign loans or which engage in foreign financial, exchange or monetary transactions, there is hereby established the National Advisory Council on International Monetary and Financial Problems (hereinafter referred to as the "Council"), consisting of the Secretary of the Treasury, as Chairman, the Secretary of State, the Secretary of Commerce, the Chairman of the Board of Governors of the Federal Reserve System,[7] the President of the

[6] See sec. 5 of the International Finance Corporation Act, page 398 of text. Also consult page 412 for sec. 4 of the International Development Association Act and page 402 for sec. 4 of the Inter-American Development Bank Act.

For revisions of functions and status of the Council, see Reorganization Plan No. 4 of 1965 (sec. 1(6), sec. 3(a) and sec. 3(b), as well as Executive Order 11269 on page 395 of the text.

[7] The material following "* * * Federal Reserve System," read as follows in the original act: "and the Chairman of the Board of Trustees of the Export-Import Bank of Washington." Subsection 4(a) has been amended by the following:

Continued

Export-Import Bank of Washington, and during such period as the Foreign Operations Administration shall continue to exist, the Director of the Foreign Operations Administration.

(b)(1) The Council, after consultation with the representatives of the United States on the Fund and the Bank, shall recommend to the President general policy directives for the guidance of the representatives of the United States on the Fund and the Bank.

(2) The Council shall advise and consult with the President and the representatives of the United States on the Fund and the Bank on major problems arising in the administration of the Fund and the Bank.

(3) The Council shall coordinate, by consultation or otherwise, so far as is practicable, the policies and operations of the representatives of the United States on the Fund and the Bank, the Export-Import Bank of Washington and all other agencies of the Government to the extent that they make or participate in the making of foreign loans or engage in foreign, financial, exchange or monetary transactions.

(4) Whenever, under the Articles of Agreement of the Fund or the Articles of Agreement of the Bank, the approval, consent or agreement of the United States is required before an act may be done by the respective institutions, the decision as to whether such approval, consent, or agreement, shall be given or refused shall (to the extent such decision is not prohibited by section 5 of this Act) be made by the Council, under the general direction of the President. No governor, executive director, or alternate representing the United States shall vote in favor of any waiver of condition under article V, section 4, or in favor of any declaration of the United States dollar as a scarce currency under article VII, section 3, of the Articles of Agreement of the Fund, without prior approval of the Council.

(5)[8] The Council shall transmit to the President and to the Congress an annual report with respect to the participation of the United States in the Fund and Bank.

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(1) The Economic Corporation Act of 1948, approved Apr. 3, 1948 (62 Stat. 141), sec. 106 of which amended subsec. 4(a) so as to include the Administrator for Economic Cooperation "during such period as the Economic Cooperation Administration shall continue to exist";

(2) The Mutual Security Act of 1951, approved Oct. 10, 1951 (65 Stat. 378), sec. 501(e)(2) of which amended subsec. 4(a), by substituting the Mutual Security Agency and the Director for Mutual Security for the Economic Cooperation Administration and the Administrator for Economic Cooperation respectively;

(3) Reorganization Plan No. 5 of 1953, effective June 30, 1953 (67 Stat. 637), sec. 7 of which abolished the function of the Chairman of the Board of Directors of the Export-Import Bank of Washington of being a member of the National Advisory Council;

(4) Reorganization Plan No. 7 of 1953, effective Aug. 1, 1953 (67 Stat. 640), sec. 4 of which provided that the Director of the Foreign Operations Administration should be a member of the National Advisory Council;

(5) Public Law 83-570, approved Aug. 9, 1954 (68 Stat. 677, 678), sec. 2 of which inserted the part of the text quoted above following "* * * the Federal Reserve System.".

Executive Order 10610, 20 F.R. 3179, effective July 1, 1955, abolished the Foreign Operations Administration and the Office of Director of the Foreign Operations Administration, and the membershp of the Director of the Foreign Operations Administration on the National Advisory Council thereby expired by operation of law effective on that date.

[8] As amended by sec. 1(1) of Public Law 89-126, approved Aug. 14, 1965 (79 Stat. 519; 22 U.S.C. 286b). See sec. 15(b) as added June 29, 1949 by sec. 2, 63 Stat. 298, 22 U.S.C. 286k-1. which reads in part:

"The reports of the National Advisory Council provided for in section 4(a)(6) of the Bretton Woods Agreements Act * * *". The original text probably should have read "section 4(b)(6)".

(6)[8] Each such report shall contain such data concerning the operations and policies of the Fund and Bank, such recommendations concerning the Fund and Bank, and such other data and material as the Council may deem appropriate.

(7) The Council shall make such reports and recommendations to the President as he may from time to time request, or as the Council may consider necessary to more effectively or efficiently accomplish the purposes of this Act or the purposes for which the Council is created.

(c) The representatives of the United States on the Fund and the Bank, and the Export-Import Bank of Washington (and all other agencies of the Government to the extent that they make or participate in the making of foreign loans or engage in foreign financial, exchange or monetary transactions) shall keep the Council fully informed of their activities and shall provide the Council with such further information or data in their possession as the Council may deem necessary to the appropriate discharge of its responsibilities under this Act.

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

Sec. 5.[9] Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) request or consent to any change in the quota of the United States under article III, section 2(a), of the Articles of Agreement of the Fund; (b) propose a par value for the United States dollar under paragraph 2, paragraph 4, or paragraph 10 of schedule C of the Articles of Agreement of the Fund; (c) propose any change in the par value of the United States dollar under paragraph 6 of schedule C of the Articles of Agreement of the Fund, or approve any general change in par values under paragraph 11 of schedule C; (d) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank; (e) accept any amendment under article XXVIII of the Articles of Agreement of the Fund on article VIII of the Articles of Agreement of the Bank; (f) make any loan to the Fund or the Bank; or (g)[10] approve either the disposition of more than 25 million ounces of Fund gold for the benefit of the Trust Fund established by the Fund on May 6, 1976, or the establishment of any additional trust fund whereby resources of the International Monetary Fund would be used for the special benefit of a single member,

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[9] 22 U.S.C. 286c. Upon entry into force on Apr. 1, 1978 of the amendments to the Articles of Agreement of the IMF, the first sentence of Sec. 5, as provided for by Sec. 3 of Public Law 94-564, was amended and restated. It formerly read as follows:

"Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) request or consent to any change in the quota of the United States under article III, section 2, of the Articles of Agreement of the Fund; (b) propose or agree to any change in the par value of the United States dollar under article IV, section 5, or article XX, section 4, of the Articles of Agreement of the Fund, or approve any general change in par values under article IV, section 7; (c) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank; (d) accept any amendment under article XVII of the Articles of Agreement of the Fund or article VIII of the Articles of Agreement of the Bank; (e) make any loan to the Fund or the Bank."

[10] Clause (g), which had been added as part of the amendment described in footnote 9, was further amended by sec. 4(a)(1) of Public Law 95-147 (91 Stat. 1228). Although it never became effective, the original clause (g) read as follows:

"(g) approve the establishment of any additional trust fund, for the special benefit of a single member, or of a particular segment of the membership, of the Fund."

or of a particular segment of the membership, of the Fund. Unless Congress by law authorizes such action, no governor or alternate appointed to represent the United States shall vote for an increase of capital stock of the Bank under article II, section 2, of the Articles of Agreement of the Bank, if such increase involves an increased subscription on the part of the United States.[11]

DEPOSITORIES

Sec. 6. Any Federal Reserve bank which is requested to do so by the Fund or the Bank shall act as its depository or its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

Sec. 7. (a) Subsection (c) of section 10 of the Gold Reserve Act of 1934, as amended (U.S.C., title 31, sec. 822a), is amended to read as follows:

"(c) The Secretary of the Treasury is directed to use $1,800,000,000 of the fund established in this section to pay part of the subscription of the United States to the International Monetary Fund; and any repayment thereof shall be covered into the Treasury as a miscellaneous receipt."

(b)[12] The Secretary of the Treasury is authorized to pay the balance of the subscription of the United States to the Fund not provided for in subsection (a) and to pay the subscription of the United States to the Bank from time to time when payments are required to be made to the Bank. For the purpose of making these payments, the Secretary of the Treasury is authorized to use as a public-debt transaction $8,675,000,000 of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this subsection of the subscription of the United States to the Fund or the Bank and repayments thereof shall be treated as public-debt transactions of the United States.

(c) For the purpose of keeping to a minimum the cost to the United States of participation in the Fund and the Bank, the Secretary of the Treasury, after paying the subscription of the United States to the Fund, and any part of the subscription of the United States to the Bank required to be made under article II, section 7(i), of the Articles of Agreement of the Bank, is authorized and directed to issue special notes of the United States from time to time at par and to deliver such notes to the Fund and the Bank in exchange for dollars to the extent permitted by the respective Articles of Agreement. The special notes provided for in this subsection shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to in-

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[11] The words "if such increase involves an increased subscription on the part of the United States" were added by sec. 1(2) of Public Law 89-126 (79 Stat. 519).

[12] Sec. 2 of Public Law 86-48 (73 Stat. 80), struck out the words "of $950,000,000" and substituted "$8,675,000,000" for the number "$4,125,000,000".

clude the purposes for which special notes are authorized and directed to be issued under the subsection, but such notes shall bear no interest, shall be non-negotiable, and shall be payable on demand of the Fund or the Bank, as the case may be. The face amount of special notes issued to the Fund under the authority of this subsection and outstanding at any one time shall not exceed in the aggregate the amount of the subscription of the United States actually paid to the Fund and the dollar equivalent of currencies and gold which the United States shall have purchased from the Fund in accordance with Articles of Agreement,[13] and the face amount of such notes issued to the Bank and outstanding at any one time shall not exceed in the aggregate the amount of the subscription of the United States actually paid to the Bank under article II, section 7(i), of the Articles of Agreement of the Bank.

(d) Any payment made to the United States by the Fund or the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

OBTAINING AND FURNISHING INFORMATION

Sec. 8.[14] (a) Whenever a request is made by the Fund to the United States as a member to furnish data under article VIII, section 5, of the Articles of Agreement of the Fund, the President may, through any agency he may designate, require any person to furnish such information as the President may determine to be essential to comply with such request. In making such determination the President shall seek to collect the information only in such detail as is necessary to comply with the request of the Fund. No information so acquired shall be furnished to the Fund in such detail that the affairs of any person are disclosed.

(b) In the event any person refuses to furnish such information when requested to do so, the President, through any designated governmental agency, may by subpoena require such person to appear and testify or to appear and produce records and other documents, or both. In case of contumacy by, or refusal to obey a subpoena served upon any such person, the district court for any district in which such person is found or resides or transacts business, upon application by the President or any governmental agency designated by him, shall have jurisdiction to issue an order requiring such person to appear and give testimony or appear and produce records and documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Government, to disclose, otherwise than in the course of official duty, any information obtained under this section, or to use such information for his personal benefit. Whoever violates any of the provisions of this subsection shall, upon conviction, be fined not more than, $5,000, or imprisoned for not more than five years, or both.

(d) The term "person" as used in this section means an individual, partnership, corporation or association.

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[13] The words beginning at "and" and ending at "Agreement" were added by sec. 2 of Public Law 87-490, June 19, 1962 (76 Stat. 105).

[14] 22 U.S.C. 286f.

FINANCIAL TRANSACTIONS WITH FOREIGN GOVERNMENTS IN DEFAULT

Sec. 9. The Act entitled "An Act to prohibit financial transactions with any foreign government in default of its obligations to the United States", approved April 13, 1934 (U.S.C. title 31, sec. 804a), is amended by adding at the end thereof a new section to read as follows:

"SEC. 3. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this Act shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof or of any organization or association acting for or on behalf of such government or political subdivision, or to the making of any loan to such government, political subdivision, organization, or association."

JURISDICTION AND VENUE OF ACTIONS

Sec. 10. For the purpose of any action which may be brought within the United States or its Territories or possessions by or against the Fund or the Bank in accordance with the Articles of Agreement of the Fund or the Articles of Agreement of the Bank, the Fund or the Bank, as the case may be, shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which either the Fund or the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When either the Fund or the Bank is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

Sec. 11. The provisions of article IX, sections 2 to 9, both inclusive, and the first sentence of article VIII, section 2(b), of the Articles of Agreement of the Fund, and the provisions of article VI, section 5(i), and article VII, sections 2 to 9, both inclusive, of the Articles of Agreement of the Bank, shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.

STABILIZATION LOANS BY THE BANK

Sec. 12. The governor and executive director of the Bank appointed by the United States are hereby directed to obtain promptly an official interpretation by the Bank as to its authority to make or guarantee loans for programs of economic reconstruction and the reconstruction of monetary systems, including loan-term stabilization loans. If the Bank does not interpret its powers to include the making or guaranteeing of such loans, the governor of the Bank representing the United States is hereby directed to propose promptly and support an amendment to the Articles of Agreement

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for the purpose of explicitly authorizing the Bank, after consultation with the Fund, to make or guarantee such loans. The President is hereby authorized and directed to accept an amendment to that effect on behalf of the United States.

STABILIZATION OPERATIONS BY THE FUND

Sec. 13. (a) The governor and executive director of the Fund appointed by the United States are hereby directed to obtain promptly an official interpretation by the Fund as to whether its authority to use its resources extends beyond current monetary stabilization operations to afford temporary assistance to members in connection with seasonal, cyclical, and emergency fluctuations in the balance of payments of any member for current transactions, and whether it has authority to use its resources to provide facilities for relief, reconstruction, or armaments, or to meet a large or sustained outflow of capital on the part of any member.

(b) If the interpretation by the Fund answers in the affirmative any of the questions stated in subsection (a), the governor of the Fund representing the United States is hereby directed to propose promptly and support an amendment to the Articles of Agreement for the purpose of expressly negativing such interpretation. The President is hereby authorized and directed to accept an amendment to that effect on behalf of the United States.

FURTHER PROMOTION OF INTERNATIONAL ECONOMIC RELATIONS

Sec. 14. (a)[15] In the realization that additional measures of international economic cooperation are necessary to facilitate the expansion and balanced growth of international trade and render most effective the operations of the Fund and the Bank, it is hereby declared to be the policy of the United States to seek to bring about further agreement and cooperation among nations and international bodies, as soon as possible, on ways and means which will best reduce obstacles to and restrictions upon international trade, eliminate unfair trade practices, promote mutually advantageous commercial relations, and otherwise facilitate the expansion and balanced growth of international trade and promote the stability of international economic relations. In considering the policies of the United States in foreign lending and the policies of the Fund and the Bank, particularly in conducting exchange transactions, the Council and the United States representatives on the Fund and the Bank shall give careful consideration to the progress which has been made in achieving such agreement and cooperation.

(b)[15] The President shall, upon the request of any committee of the Congress with legislative or oversight jurisdiction over monetary policy or the International Monetary Fund, provide to such committee any appropriate information relevant to that committee's jurisdiction which is furnished to any department or agency of the United States by the International Monetary Fund. The President shall comply with this provision consistent with United States membership obligations in the International Monetary Fund and

[15] Sec. 4(a)(2) of Public Law 95–147 (91 Stat. 1228) added subsection designation "(a)" and a new subsec. (b).

subject to such limitations as are appropriate to the sensitive nature of the information.

Sec. 15.[16] (a) Any securities issued by International Bank for Reconstruction and Development (including any guaranty by the Bank, whether or not limited in scope), and any securities guaranteed by the Bank as to both principal and interest, shall be deemed to be exempted securities within the meaning of paragraph (A)(2) of section 3 of the Act of May 27, 1933, as amended (U.S.C., title 15, sec. 77c), and paragraph (a)(12) of section 3 of the Act of June 6, 1934, as amended (U.S.C., title 15, sec. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest for the protection of investors.

(b) The reports of the National Advisory Council provided for in section 4(a)(6)[17] of the Bretton Woods Agreements Act shall also cover and include the effectiveness of the provisions of section 15(a) of this Act and the exemption for securities issued by the Bank provided by Section 8 of the National Bank Act in facilitating the operations of the Bank and the extent to which the operations of the Bank may assist in financing European recovery and the reconstruction and development of the economic resources of member countries of the Bank and the recommendations of the Council as to any modifications it may deem desirable in the provisions of this Act.

Sec. 16.[18] (a) The United States Governor of the Fund is authorized to request and consent to an increase of $1,375,000,000 in the quota of the United States under article III, section 2, of the articles of agreement of the Fund as proposed in the resolution of the Board of Governors of the Fund dated February 2, 1959.

(b) The United States Governor of the Bank is authorized (1) to vote for increases in the capital stock of the Bank under article II, section 2, of the Articles of Agreement of the Bank, as recommend-

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[16] 22 U.S.C. 286k-1. Sec. 15 was added by sec. 2 of Public Law 81-142, June 29, 1949 (63 Stat. 298-299). sec. 3 of this law provides as follows:

"That paragraph Seventh or section 8 of the National Bank Act, as amended (U.S.C., title 12, sec. 24), is amended by adding to the end thereof the following new sentence: 'The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development which are at the time eligible for purchase by a national bank for its own account: *Provided*, That no association shall hold obligations issued by said bank as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund'."

Sec. 3 of this law, provides as follows:

"SUSPENSION OF RIGHT OF INTERNATIONAL BANK TO ISSUE SECURITIES UNDER SECTION 286K-1: REPORT OF SECURITIES AND EXCHANGE COMMISSION [22 U.S.C. 286k-2. Heading inserted by United States Code.].

"Sec. 3. The Securities and Exchange Commission acting in consultation with the National Advisory Council on International Monetary and Financial Problems is authorized to suspend the provisions of section 15(a) of the Bretton Woods Agreements Act at any time as to any or all securities issued or guaranteed by the Bank the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this Act and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission."

[17] This should probably have read "section 4(b)(6)." See footnote 8 on page 369.

[18] Sec. 16 was added by sec. 1 of Public Law 86-48, June 17, 1959 (73 Stat. 80).

ed in the resolution of the Board of Governors of the Bank dated February 2, 1959, and (2) if such increases become effective, to subscribe on behalf of the United States to thirty-one thousand seven hundred and fifty additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank.

Sec. 17.[19] (a) In order to carry out the purposes of the decision of January 5, 1962, of the Executive Directors of the International Monetary Fund, the Secretary of the Treasury is authorized to make loans, not to exceed $2,000,000,000 outstanding at any one time, to the Fund under article VII, section 1(i),[20] of the Articles of Agreement of the Fund. Any loan under the authority granted in this subsection shall be made with due regard to the present and prospective balance of payments and reserve position of the United States.

(b) For the purpose of making loans to the International Monetary Fund pursuant to this section, there is hereby authorized to be appropriated $2,000,000,000, to remain available until expended to meet calls by the International Monetary Fund. Any payments made to the United States by the International Monetary Funds as a repayment on account of the principal of a loan made under this section shall continue to be available for loans to the International Monetary Fund.

(c) Payments of interest and charges to the United States on account of any loan to the International Monetary Fund shall be covered into the Treasury as miscellaneous receipts. In addition to the amount authorized in subsection (b), there is hereby authorized to be appropriated such amounts as may be necessary for the payment of charges in connection with any purchases of currencies or gold by the United States from the International Monetary Fund.

Sec. 18.[19] Any purchases of currencies or gold by the United States from the International Monetary Fund may be transferred to and administered by the Fund established by section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), for use in accordance with the provisions of that section. The Secretary of the Treasury is authorized to utilize the resources of that fund for the purpose of any repayments in connection with such transactions.

Sec. 19.[21] The United States Governor of the Bank is authorized to vote for an increase of $1,000,000,000 in the authorized capital stock of the Bank under Article II, section 2, of the Articles of Agreement of the Bank, as recommended in the report, dated November 6, 1962, to the Board of Governors of the Bank by the Bank's Executive Directors.

Sec. 20.[22] (a) The United States Governor of the Fund is authorized to consent to an increase of $1,035,000,000 in the quota of the United States in the Fund.

(b) In order to pay the increase in the United States subscription to the Fund provided for in this section, there is hereby authorized

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[19] Sec. 18 was added by Public Law 87-490, June 19, 1962 (76 Stat. 105).

[20] Upon entry into force of the amendments to the Articles of Agreement of the IMF on Apr. 1, 1978, this reference to sec. 1(i) was substituted in lieu of a reference to sec. 2(i), as had been provided for by sec. 4 of Public Law 94-564.

[21] Sec. 19 was added by Public Law 88-178, 77 Stat. 234, approved Nov. 13, 1963.

[22] Sec. 20 was added by Public Law 89-31, 79 Stat. 119, approved June 2, 1965.

to be appropriated $1,035,000,000, to remain available until expended.

Sec. 21.[23] The United States Governor of the Bank is authorized to agree to an amendment to the Articles of Agreement of the Bank to permit the Bank to make, participate in, or guarantee loans to the International Finance Corporation for use in the lending operations of the latter.

Sec. 22.[24] (a) The United States Governor of the Fund is authorized to consent to an increase of $1,540,000,000 in the quota of the United States in the Fund.

(b) In order to pay the increase in the United States quota in the Fund provided for in this section, there is hereby authorized to be appropriated $1,540,000,000, to remain available until expended.

Sec. 23.[24] (a) The United States Governor of the Bank is authorized (1) to vote for an increase of $3,000,000,000 in the authorized capital stock of the Bank, and (2) if such increase becomes effective, to subscribe on behalf of the United States to two thousand four hundred and sixty-one additional shares of the capital stock of the Bank.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated $246,100,000 to remain available until expended.

Sec. 24.[25] The United States Governor of the Fund is authorized to accept the amendments to the Articles of Agreement of the Fund approved in resolution numbered 31-4 of the Board of Governors of the Fund.

Sec. 25.[25] The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 1,705 million Special Drawing Rights.

Sec. 26.[25] The United States Governor of the Fund is directed to vote against the establishment of a Council authorized under Article XII, Section 1 of the Fund Articles of Agreement as amended, if under any circumstances the United States' vote in the Council would be less than its weighted vote in the Fund.

Sec. 27.[26] (a) The United States Governor of the Bank is authorized—

(1) to vote for an increase of seventy thousand shares in the authorized capital stock of the Bank; and

(2) if such increase becomes effective, to subscribe on behalf of the United States to thirteen thousand and five additional shares of the capital stock of the Bank: *Provided, however,* That any subscription to additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.[27]

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there are hereby au-

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[23] Sec. 21 was added by Public Law 89-126, 79 Stat. 519, approved Aug. 14, 1965.

[24] Secs. 22 and 23 were added by Public Law 91-599, 84 Stat. 1657, approved Dec. 30, 1970.

[25] Secs. 24, 25, and 26, were added by sec. 1 of Public Law 94-564, 90 Stat. 2660, approved Oct. 19, 1976.

[26] Sec. 27 was added by sec. 201 of Public Law 95-118 (91 Stat. 1067).

[27] The proviso clause in par. (2) was amended and restated by sec. 1312 of Public Law 97-35 (95 Stat. 740). It formerly read as follows: "That any subscription to additional shares shall be made only after the amount required for such subscription has been appropriated."

thorized to be appropriated, without fiscal year limitations, $1,568,856,318 for payment by the Secretary of the Treasury.[28]

Sec. 28.[29] (a) For the purpose of participation of the United States in the Supplementary Financing Facility (hereinafter referred to as the "facility") established by the decision numbered 5508-(77/127) of the Executive Directors of the Fund, the Secretary of the Treasury is authorized to make resources available as provided in the decision numbered 5509-(77/127) of the Fund, in an amount not to exceed the equivalent of 1,450 million Special Drawing Rights.

(b) The Secretary of the Treasury shall account, through the Fund established by section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a), for any adjustment in the value of monetary assets held by the United States in respect to United States participation in the facility.

(c) Notwithstanding any other provision of this section, the authority of the Secretary to enter into agreements making resources available under this section shall be limited to such amounts as are appropriated in advance in appropriation Acts. Effective October 1, 1978, there are hereby authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as are necessary to carry out subsection (a) of this section, but not to exceed an amount of dollars equivalent to 1,450 million Special drawing Rights.[30]

Sec. 29.[31] The Secretary of the Treasury shall instruct the United States executive director to seek to assure that no decision by the International Monetary Fund[32] undermines or departs from United States policy regarding the comparability of treatment of public and private creditors in cases of debt rescheduling where official United States credits are involved.

Sec. 30.[33] (a) The Secretary of the Treasury shall instruct the United States executive director on the Executive Board of the International Monetary Fund to initiate a wide consultation with the managing director of the Fund and other member country executive directors with regard to encouraging the staff of the Fund to

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[28] U.S. payments for this increase were made in the following amounts and public laws: Fiscal year 1978—$380 million ($38 million paid-in capital; $342 million callable capital) (Public Law 95-148); fiscal year 1979—$163.1 million ($16.3 million paid-in capital; $146.8 million callable capital) (Public Law 95-481); fiscal year 1980—$163.1 million ($16.3 million paid-in capital; $146.8 million callable capital) (Public Law 96-123); fiscal year 1981—$328 million ($32.8 million paid-in capital; $295.2 million callable capital) (Public Law 96-536); fiscal year 1982 $341.5 ($37.2 million paid-in capital; $304.3 million callable capital) (Public Law 97-121); fiscal year 1983—$163.2 million ($16.3 million paid-in capital; $146.9 million callable capital) (Public Law 97-377).

[29] 22 U.S.C. 286e-7. Sec. 28 was added by sec. 1 of Public Law 95-435 (92 Stat. 1051).

[30] FA Appropriations Act, 1979:

"For the purpose of participation by the United States, in an amount equivalent to 1,450,000,000 Special Drawing Rights, in the Supplementary Financing Facility established by decision numbered 5508-(77/127) of the Executive Directors of the Fund, as provided in the decision numbered 5509-(77/127) of the Fund, and for the expenditures resulting therefrom, not to exceed $1,831,640,000, to remain available until the termination of the facility: *Provided*, That no such payment may be made while the United States Executive Director to the International Monetary Fund is compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while the alternate United States Executive Director to the Fund is compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code."

[31] 22 U.S.C. 286e-8. Sec. 29 was added by sec. 3 of Public Law 95-435 (92 Stat. 1052).

[32] The words "on the use of the facility" which previously appeared at this point, were struck out by sec. 5 of Public Law 96-389 (94 Stat. 1554).

[33] 22 U.S.C. 286e-9. Sec. 30 was added by sec. 4 of Public Law 95-435 (92 Stat. 1052).

formulate stabilization programs[34] which, to the maximum feasible extent, foster a broader base of productive investment and employment, especially in those productive activities which are designed to meet basic human needs.

(b) In order to gain a better understanding of the social, political and economic impact of the Fund's stabilization programs[34] on borrowing countries, especially as it relates to the poor majority within those countries, the United States Governor of the Fund shall prepare and submit, not later than 180 days after the close of each calendar year, a report to the Congress. Such report shall evaluate, to the maximum extent feasible, with respect to countries to which loans are made[35] during each year, the effects of policies of those countries which result from the standby agreements on basic human needs in such countries.

Sec. 31.[36] * * * [Repealed-1981]

Sec. 32.[37] The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 4,202.5 million Special Drawing Rights, limited to such amounts as are appropriated in advance in appropriation Acts.[38]

Sec. 33.[39] (a) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials to use all appropriate means to encourage countries, in formulating economic adjustment programs to deal with their balance of payments difficulties, to design those programs so as to safeguard, to the maximum feasible extent, jobs, investment, real per capital income, policies to reduce the gap in wealth between rich and poor, and social programs such as health, housing, and education.

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[34] The words "entered into pursuant to loans from the Supplementary Financing Facility" which previously appeared at this point, were struck out by sec. 2(b) of Public Law 96-389 (94 Stat. 1553).

[35] The words "by the Supplementary Financing Facility" which previously appeared at this point, were struck out by sec. 2(b)(3) of Public Law 96-389 (94 Stat. 1553).

[36] Sec. 31, which was added by sec. 4 of Public Law 95-435 (92 Stat. 1052) and required the Secretary of the Treasury to submit an annual report to Congress on the status of human rights in countries drawing on funds made available under the Supplementary Financing Facility of the IMF, was repealed by sec. 1371(a)(1) of Public Law 97-35 (95 Stat. 746). See sec. 116 of the Foreign Assistance Act of 1961 (page 31, vol. I) for a reporting requirement on country human rights practices.

[37] 22 U.S.C. 286e-lg. Sec. 32 was added by sec. 1 of Public Law 96-389 (94 Stat. 1551). Such Act also amended sec. 32 by substituting the final phrase in lieu of original text of "to such extent or in such amounts are provided in appropriation Acts."

[38] Public Law 96-544 (94 Stat. 3213, approved December 17, 1980) provides the following:

"FUNDS APPROPRIATED TO THE PRESIDENT

"INTERNATIONAL MONETARY PROGRAMS

"United States Quota, International Monetary Fund

"For an increase in the United States quota in the International Monetary Fund, the dollar equivalent of 4,202.5 million Special Drawing Rights (approximately $5,537,839,000), to remain available until expended, and balances equivalent to the current SDR value of the United States quota in the Fund shall be merged with this appropriation. Amounts equivalent to the United States reserve position in the Fund shall be credited to this appropriation. Amounts available in this account may be transferred to the Fund by the Secretary of the Treasury to meet United States obligations in the Fund in an amount not to exceed at any time the United States quota in the Fund. The amounts provided for valuation adjustments of Fund holdings of United States dollars shall continue to be available for this purpose and shall be available for transfers to this appropriation account for the purpose of such adjustments."

[39] 22 U.S.C. 286s. Sec. 33 was added by Sec. 2(a) of Public Law 96-389 (94 Stat. 1551).

(b) To ensure the effectiveness of economic adjustment programs supported by Fund resources and the reinforcement of those programs by longer tmer efforts to promote sustained growth and improved living conditions—

(1) United States representatives to the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions that would—

(A) permit stand-by arrangements to be extended beyond three years, as necessary to enable Fund members to implement their economic adjustment programs successfully;

(B) provide that in approving any economic adjustment program the Fund shall take into account the effect such program will have on jobs, investment, real per capita income, the gap in wealth between the rich and poor, and social programs such as health, housing, and education, in order to seek to minimize the adverse impact of those adjustment programs on basic human needs; and

(C) provide that letters of intent submitted to the Fund in support of an economic adjustment program reflect that the member country has taken into account the effect such program will have on the factors listed in subparagraph (B);

(2)(A) before voting on the approval of any standby arrangement with respect to any economic adjustment program, the United States Executive Director shall review—

(i) any analysis of factors prepared by the Fund or the member country in accordance with subparagraphs (B) and (C) of paragraph (1), or

(ii) if no such analysis is prepared and available for such review, an analysis which shall be prepared by the United States Governor of the Fund which examines the effect of the program on the factors listed in subparagraph (B) of paragraph (1); and

(B) the United States Executive Director of the Fund shall take into account the analysis reviewed pursuant to subparagraph (A) of this paragraph in voting on approval of that standby arrangement;

(3) United States representatives to the Fund, to the Bank, and to other appropriate institutions shall work toward improving coordination among these institutions and, in particular, shall work toward formulation of programs in association with economic adjustment programs supported by Fund resources which (A) will, among other things, promote employment, investment, real income per capita, improvements in income distribution, and the objectives of social programs such as health, housing, and education, and (B) will, to the maximum extent feasible and consistent with the borrowing country's need to improve its balance of payments position within a reasonable period, ameliorate any adverse effects of economic adjustment programs on the poor;

(4) United States representatives to the Fund and the Bank shall seek amendments to decisions on policies on the use of Fund and Bank resources to provide that, where countries are seeking Extended Fund Facility or upper credit tranche draw-

ings from the Fund and are eligible to receive financing from the Bank, the Fund and Bank will coordinate their financing activities in order—

(A) to take into account the effects of economic adjustment programs on the areas listed in clause (A) of paragraph (3),

(B) to provide, to the extent feasible, Bank project loans designed to safeguard and further basic human needs in countries adopting economic adjustment programs supported by Fund resources, and

(C) to provide, as appropriate, Bank financing for programs of structural adjustment that will facilitate development of a productive economic base and greater attainment of basic human needs objectives over the longer term; and

(5) United States representatives to the Fund and the Bank shall request the Fund and the Bank to provide periodic analyses of the effects of economic adjustment programs supported by Fund or Bank financing on jobs, investment, real income per capita, income distribution, and social programs such as health, housing, and education.

(c) The National Advisory Council on International Monetary and Financial Policies shall include in each of its annual reports to the Congress a statement detailing the actions and progress made in carrying out the requirements of subsections (a) and (b) of this section.

Sec. 34.[40] The Secretary of the Treasury, in consultation with the United States Executive Director of the Fund, shall study and, following consultations with member countries, shall report to the Congress prior to May 15, 1981, with respect to—

(1) the current adequacy of Fund resources, together with projected needs of the Fund over the next five years;

(2) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow directly from the governments of oil exporting countries;

(3) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow in private capital markets through the issuance of securities backed by Fund resources;

(4) the feasibility of an offer by the Fund of incentives to oil exporting countries, including financial guarantees by the Fund for government-to-government loans to countries with balance-of-payments deficits, in order to promote more direct recycling of oil surpluses; and

(5) methods to enhance cooperation between commercial banks and the Fund to promote the availability of adequate resources for balance-of-payments financing.

Sec. 35.[41] It is the sense of the Congress that the Secretary of the Treasury and the United States Executive Director of the Fund

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[40] 22 U.S.C. 286t. Sec. 34 was added by Sec. 4(b) of Public Law 96-389 (94 Stat. 1553).

[41] 22 U.S.C. 286u. Sec. 35 was added by sec. 4(b) of Public Law 96-389 (94 Stat. 1554). Language in sec. 35 requiring a report from the Secretary of the Treasury by May 15, 1981, concerning progress made in achieving the goal stated in the section, was deleted by sec. 1371(a)(2) of Public Law 97-35 (95 Stat. 746).

shall encourage member countries of the Fund to negotiate a dollar-Special Drawing Rights substitution account in which equitable burden sharing would exist among participants in the account.

Sec. 36.[42] It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be granted appropriate membership in the Fund and that the United States Executive Director of the Fund shall so notify the Fund.

Sec. 37.[43] It is the policy of the United States that the Palestine Liberation Organization should not be given membership in the Fund or be given observer status or any other official status at any meeting sponsored by or associated with the Fund. The United States Executive Director of the Fund shall promptly notify the Fund of such policy.

In the event that the fund provides either membership, observer status, or any other official status to the Palestine Liberation Organization, such action would result in a serious dimunition of United States support. Upon review of such action, the President would be required to report his recommendations to the Congress with regard to any further United States participation in the Fund.

Sec. 38.[44] It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador and Nicaragua, the Fund and the Bank should encourage programs which assist the private sector to create an environment which will stabilize the economy of the nation; and that the United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such programs.

Sec. 39.[45] (a) The United States Governor of the Bank is authorized—

(1) to vote to increase by three hundred and sixty-five thousand shares the authorized capital stock of the Bank; and

(2) to subscribe on behalf of the United States to not more than seventy-three thousand and ten shares of the capital stock of the Bank: *Provided, however,* That not more than seven and one-half percent ($658,305,195) of the price of the shares subscribed may be paid in to the Bank on subscription, with the remainder of that price ($8,149,256,155) being subject to call only when a call on unpaid subscriptions is required to meet obligations of the Bank for funds borrowed or on loans guaranteed by it and not for use by the Bank in its lending activities or for administrative expenses: *Provided further,* That any subscription to such additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) In order to pay for the paid-in portion of the United States subscription to the Bank provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $658,305,195 for payment by the Secretary of the Treasury: *Pro-*

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[42] 22 U.S.C. 386v. Sec. 36 was added by sec. 6 of Public Law 96-389 (94 Stat. 1554).
[43] 22 U.S.C. 286w. Sec. 37 was added by sec. 7 of Public Law 96-389 (94 Stat. 1554).
[44] 22 U.S.C. 286x. Sec. 38 was added by sec. 8 of Public Law 96-389 (94 Stat. 1554).
[45] 22 U.S.C. 286e-1h. Sec. 39 was added by sec. 1311 of Public Law 97-35 (95 Stat. 740).

vided further, That not more than $109,720,549 of such sum may be made available for each of the fiscal years 1982, 1983, and 1984.[46]

[46] U.S. payments for this increase were made in the following amounts and public laws: Fiscal year 1982—$1,493.1 million ($109.1 million paid-in capital; $1,383.4 callable capital) (Public Law 97-121); fiscal year 1983—$1,493.1 million ($109.1 million paid-in capital; $1,383.4 million callable capital) (Public Law 97-377).

4. Special Drawing Rights Act, as amended

Public Law 90-349 [H.R. 16911], 82 Stat. 188, approved June 19, 1968 as amended by Public Law 91-599 [H.R. 18306], 84 Stat, 1657, approved December 30, 1970; and by Public Law 94-564 [H.R. 13955], 90 Stat. 2660, approved October 18, 1976

AN ACT To provide for United States participation in the facility based on Special Drawing Rights in the International Monetary Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Drawing Rights Act."

Sec. 2.[1] The President is hereby authorized (a) to accept the amendment to the articles of agreement of the International Monetary Fund (hereinafter referred to as the "Fund"), attached to the April 1968 report by the Executive Directors to the Board of Governors of the Fund, for the purpose of (i) establishing a facility based on Special Drawing Rights in the Fund and (ii) giving effect to certain modifications in the present rules and practices of the Fund, and (b) to participate in the special drawing account established by the amendment.

Sec. 3.[2] (a) Special Drawing Rights allocated to the United States pursuant to article XVIII[3] of the Articles of Agreement of the Fund, and Special Drawing Rights otherwise acquired by the United States, shall be credited to the account of, and administered as part of, the Exchange Stabilization Fund established by section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a).

(b) The proceeds resulting from the use of Special Drawing Rights by the United States, and payments of interest to the United States Articles of Agreement of the Fund, shall be deposited in the Exchange Stabilization Fund. Currency payments by the United States in return for Special Drawing Rights, and payments of charges or assessments pursuant to article XX, article XXIV, and article XXV[3] of the Articles of Agreement of the Fund, shall be made from the resources of the Exchange Stabilization Fund.

Sec. 4.[4] (a) The Secretary of the Treasury is authorized to issue to the Federal Reserve banks, and such banks shall purchase, Special Drawing Right certificates in such form and in such denominations as he may determine, against any Special Drawing Rights held to the credit of the Exchange Stabilization Fund. Such certificates shall be issued and remain outstanding only for the purpose of financing the acquisition of Special Drawing Rights or for financing exchange stabilization operations. The amount of special Drawing Right certificates issued and outstanding shall at no time

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[1] 22 U.S.C. 286n.
[2] 22 U.S.C. 286o.
[3] Upon entry into force on Apr. 1, 1978, of the amendments to the Articles of Agreement of the IMF, certain technical changes regarding references to articles in secs. 3, 6, and 7 became effective, as provided for by sec. 5 of Public Law 94-564.
[4] 22 U.S.C. 286pp.

exceed the value of the Special Drawing Rights held against the Special Drawing Right certificates. The proceeds resulting from the issuance of Special Drawing Right certificates shall be covered into the Exchange Stabilization Fund.

(b) Special Drawing Right certificates owned by the Federal Reserve banks shall be redeemed from the resources of the Exchange Stabilization Fund at such times and in such amounts as the Secretary of the Treasury may determine.

Sec. 5. (a) The third sentence of the second paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 412), is amended by inserting "or Special Drawing Right certificates," after "gold certificates,".

(b) The first sentence of the fifth paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 415), is amended by inserting "Special Drawing Right certificates," after "gold certificates,".

(c) The seventh paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 417), is amended by (i) inserting ", Special Drawing Right certificates," after "gold certificates" in the first sentence; (ii) inserting "Special Drawing Right certificates," after "gold certificates," in the second sentence; and (iii) inserting "and Special Drawing Right certificates" after "gold certificates" in the third sentence.

(d) The fifteenth paragraph of section 16 of the Federal Reserve Act, as amended (12 U.S.C. 467), is amended by inserting (i) "or of Special Drawing Right certificates" after "gold certificates" in the first sentence, and (ii) by striking the third sentence and inserting in lieu thereof "Deposits so made shall be held subject to the orders of the Board of Governors of the Federal Reserve System and deposits of gold or gold certificates shall be payable in gold certificates, and deposits of Special Drawing Right certificates shall be payable in Special Drawing Right certificates, on the order of the Board of Governors of the Federal Reserve System to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent."

Sec. 6.[5] Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States vote to allocate in each basic period Special Drawing Rights under article XVIII,[3] sections 2 and 3, of the Articles of Agreement of the Fund so that allocations to the United States in that period exceed an amount equal to the United States quota in the Fund as authorized under the Bretton Woods Agreements Act.

Sec. 7.[6] The provisions of article XXI(b)[3] of the Articles of Agreement of the Fund shall have full force and effect in the United States and its territories and possessions when the United States becomes a participant in the special drawing account.

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[5] 22 U.S.C. 286q. As amended and restated by sec. 2 of Public Law 91-599, 84 Stat. 1657, approved Dec. 30, 1970.

[6] 22 U.S.C. 286r.

5. Par Value Modification Act, as amended

Public Law 92-268 [3160], 31 U.S.C. 449-449c, 86 Stat. 116, approved March 31, 1972, as amended by Public Law 93-110 [H.R. 6912], 87 Stat. 532, approved September 21, 1973; and by Public Law 94-564 [H.R. 13955], 90 Stat. 2660, approved October 19, 1976

AN ACT To provide for a modification in the par value of the dollar, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "Par Value Modification Act".

Sec. 2.[1] * * * [Repealed—1978]

Sec. 3. The Secretary of the Treasury is authorized and directed to maintain the value in terms of gold of the holdings of United States dollars of the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Development Association, and the Asian Development Bank to the extent provided in the articles of agreement of such institutions. There is hereby authorized to be appropriated, to remain available until expended, such amounts as may be necessary to provide for such maintenance of value.

Sec. 4. The increase in the value of the gold held by the United States (including the gold held as security for gold certificates) resulting from the change in the par value of the dollar authorized by section 2 of this Act shall be covered into the Treasury as a miscellaneous receipt.

Sec. 5.[2] It is the sense of the Congress that the President shall take all appropriate action to expedite realization of the international monetary reform noted at the Smithsonian on December 18, 1971.

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[1] Upon entry into force on Apr. 1, 1978 of the amendments to the Articles of Agreement of the IMF, sec. 2 was repealed, as provided for by sec. 6 of Public Law 94-564. Previously, sec. 2 read as follows:

"Sec. 2. The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of $1 equals 0.828948 Special Drawing Right or, the equivalent in terms of gold, of forty-two and two-ninths dollars per fine troy ounce of gold. When established such par value shall be the legal standard for defining the relationship of the dollar to gold for the purpose of issuing gold certificates pursuant to section 14(c) of the Gold Reserve Act of 1934 (31 U.S.C. 405b)."

[2] Sec. 5 added by sec. 2 of Public Law 93-110 (87 Stat. 352). The remainder of the text to Public Law 93-110 is retained on page 393 of text.

In addition to the amendments to the Par Value Modification Act made by Public Law 93-110, 87 Stat. 352, approved September 21, 1973, section 3 of Public Law 93-110 as amended provided as follows:

"SEC. 3. (a) Sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C. 442 and 443) are repealed.

"(b)[3] No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date subsections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

"(c)[3] The provisions of subsections (a) and (b) of this section shall take effect either on December 31, 1974, or at any time prior to such date that the President finds and reports to Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

[3] Amended by sec. 2 of Public Law 93-373, 88 Stat. 445, approved Aug. 14, 1974. Subsec. (b) formerly read as follows:

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulations, or order under authority of any such law, may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold."

Subsec. (c) formerly read as follows:

"(c) The provisions of this section, pertaining to gold, shall take effect when the President finds and reports to the Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

6. Providing Amendments to the Bretton Woods Agreements Act

Partial Text of Public Law 94-564 [H.R. 13955], 90 Stat. 2660, approved October 19, 1976

AN ACT To provide for amendment of the Bretton Woods Agreements Act, and for other purposes.

NOTE.—Except for the provisions included below, Public Law 94-564 contained amendments to the Bretton Woods Agreements Act, the Special Drawing Rights Act, and the Par Value Modification Act. These have been incorporated at the appropriate places in the text.

* * * * * * *

Sec. 7. Section 10(a) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(a)) is amended to read as follows:

"SEC. 10. (a) The Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to and consistent with the United States obligations in the International Monetary Fund. The Secretary of the Treasury shall annually make a report on the operations of the fund to the President and to the Congress.".

Sec. 8. Section 14(c) of the Gold Reserve Act of 1934 (31 U.S.C. 405b) is amended to read as follows: "The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as he may determine, against any gold held by the United States Treasury. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard provided in section 2 of the Par Value Modification Act (31 U.S.C. 449) on the date of enactment of this amendment, of the gold so held against gold certificates.".

Sec. 9. The amendments made by sections 2, 3, 4, 5, 6, and 7 of this Act shall become effective upon entry into force of the amendments to the Articles of Agreement of the International Monetary Fund approved in Resolution Numbered 31-4 of the Board of Governors of the Fund.[1]

[1] Such amendments entered into force Apr. 1, 1978.

7. Bretton Woods Agreements Act Amendments, 1978

Partial text of Public Law 95–435 [H.R. 9214], 92 Stat. 1051, approved October 10, 1978, as amended by Public Law 96–389 [S. 2271], 94 Stat. 1551 at 1553, approved October 7, 1980

AN ACT To amend the Bretton Woods Agreements Act to authorize the United States to participate in the Supplementary Financing Facility of the International Monetary Fund.

NOTE.—Except for the provisions included below, Public Law 95–435 contained amendments to the Bretton Woods Agreements Act and the Export Administration Act of 1969. These are incorporated in the text at the appropriate locations.

* * * * * * *

Sec. 5. (a) * * *[1]

(b) It is the sense of the Congress that the Government of the United States should take steps to disassociate itself from any foreign government which engages in the international crime of genocide.

(c) * * *

(d) * * *

(e) * * *

Sec. 6.[2] The Secretary of the Treasury shall instruct the Executive Director of the United States to the International Monetary Fund to work in opposition to any extension of financial or technical assistance by the Supplemental Financing Facility or by any other agency or facility of such Fund to any country the government of which—

(1) permits entry into the territory of such country to any person who has committed an act of international terrorism, including any act of aircraft hijacking, or otherwise supports, encourages, or harbors such person; or

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[1] Subsecs. (a), (c), (d), and (e) of sec. 5, which provided for a prohibition on imports into the United States from Uganda, were repealed by sec. 2(a) of Public Law 96–67 (93 Stat. 415, Sept. 21, 1979). During 1979, prior to this repeal several actions were taken pursuant to this act. On Feb. 6, 1979, the President issued Executive Order 12117 (44 F.R. 7937) "in order to provide for the consistent implementation of import restrictions imposed against Uganda by Section 5(c)." Both sec. 5(c) and the Executive order provided for the lifting of this prohibition if the President determined that Uganda was no longer committing a consistent pattern of gross violations of human rights and so certified to the Congress. Pursuant to this authority, the President determined on May 15, 1979 that the Government of Uganda was no longer violating human rights. This determination also has the effect of revoking Executive Order 12117 and immediately allowed for the resumption of imports from and exports to Uganda. Public Law 96–67, then, legislatively repealed the appropriate subsections of Public Law 95–435.

[2] 22 U.S.C. 286e–11.

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(2) fails to take appropriate measures to prevent any such person from committing any such act outside the territory of such country.

Sec. 7.[3] The Congress reaffirms its commitment that beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

[3] 31 U.S.C. 27. Sec. 7 was amended and restated by sec. 3 of Public Law 96-389 (94 Stat. 1553). Previously, sec. 7 would have required the total budget outlays of the Federal Government not to exceed receipts, beginning with fiscal year 1981.

8. Bretton Woods Agreements Act Amendments, 1980

Partial text of Public Law 96-389 [S. 2271], 94 Stat. 1551, approved October 7, 1980

AN ACT To amend the Bretton Woods Agreements Act to authorize consent to an increase in the United States quota in the International Monetary Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NOTE.—Except for the provisions included below, Public Law 96-389 contained amendments to the Bretton Woods Agreements Act and to the Bretton Woods Agreements Acts Amendments, 1978. These are incorporated in the text at the appropriate locations.

* * * * * * *

RECYCLING BALANCE-OF-PAYMENTS SURPLUSES

Sec. 4. (a)[1] It is the sense of the Congress that (1) the interests of the United States and those of other member countries require an effective International Monetary Fund equipped with resources adequate to facilitate orderly balance-of-payments adjustments; (2) persistent balance-of-payments surpluses in oil exporting countries have placed, and will continue to place, severe strains on the resources of oil importing countries and on the liquidity of the Fund; (3) these strains can only be relieved if the oil exporting countries assume a greater burden for financing balance-of-payments deficits through direct methods of recycling their surpluses and through proportionally greater contributions to the Fund and to the international lending institutions; and (4) the Fund must explore innovative proposals to encourage more direct recycling of oil surpluses and to increase its own liquidity.

* * * * * * *

Sec. 9.[2] The United States Executive Director to the Fund shall seek to insure (a) that Fund salaries do not exceed those levels endorsed by the Fund Bank Joint Committee on Staff Compensation Issues; and (b) that travel costs are minimized by limiting first class and supersonic travel to instances where no reasonable alternative exists.

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[1] 22 U.S.C. 286t note.
[2] 22 U.S.C. 286a note.

ROLE OF GOLD IN INTERNATIONAL MONETARY SYSTEMS

Sec. 10.[3] (a) The Secretary of the Treasury shall establish and chair a commission consisting of—

(1) three members of the Board of Governors of the Federal Reserve System and two members of the Council of Economic Advisors, all of whom shall be designated by the Secretary of the Treasury;

(2) one majority and one minority member each from (A) the Joint Economic Committee of the Congress, (B) the Committee on Banking, Housing, and Urban Affairs of the Senate, and (C) the Committee on Banking, Finance and Urban Affairs of the House of Representatives, who shall be designated by the Speaker of the House of Representatives and the President of the Senate, respectively, upon the recommendations of the majority and minority leaders of the respective Houses; and

(3) four distinguished private citizens with business, finance, or academic backgrounds who shall be designated by the Secretary.

(b) The commission shall conduct a study to assess and make recommendations with regard to the policy of the United States Government concerning the role of gold in domestic and international monetary systems, and shall transmit to the Congress a report containing its findings and recomendations not later than one year after the date of enactment of this Act.

(c) Sums appropriated pursuant to section 5 of Public Law 95–612 shall be available to the commission to carry out its functions.[4]

* * * * * * *

EFFECTIVE DATE

Sec. 12. This Act shall take effect on its date of enactment, except that funds may not be appropriated under any authorization contained in this Act for any period prior to October 1, 1980.

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[3] 31 U.S.C. 822a note.

[4] Sec. 5 of Public Law 96–612 authorized "not to exceed $24,000,000 for fiscal year 1979, including sums for official functions and reception and representation expenses, to carry out the international affairs functions of the Department of the Treasury."

9. *Foreign Currency Reports*[1]

Partial text of Public Law 93-110 [H.R. 6912], 31 U.S.C. 1151-1153, 87 Stat. 352, approved September 21, 1973

AN ACT To amend the Par Value Modification Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE II—FOREIGN CURRENCY REPORTS

STATEMENT OF FINDINGS

Sec. 201. The Congress finds that—

(1) movements of mobile capital can have a significant impact on the proper functioning of the international monetary system;

(2) it is important to have as complete and current data as feasible on the nature and source of these capital flows, including transactions by large United States business enterprises and their foreign affiliates;

(3) it is desirable to emphasize this objective by supplementing existing legal authority for the collection of data on capital flows contained in section 5(b) of the Emergency Banking Act of 1933 (12 U.S.C. 95a) and section 8 of the Bretton Woods Agreements Act of 1945 (22 U.S.C. 286f).

AUTHORITY TO PRESCRIBE REGULATIONS

Sec. 202. (a) The Secretary of the Treasury (hereafter referred to as the "Secretary") is authorized and directed, under the authority of this title and any other authority conferred by law, to supplement regulations requiring the submission of report on foreign currency transactions consistent with the statement of findings under section 201. Regulations prescribed under this title shall require that such reports contain such information and be submitted in such manner and at such times, with reasonable exceptions and classifications, as may be necessary to carry out the policy of this title.

(b) Reports required under this title shall cover foreign currency transactions conducted by any United States person and by any foreign person controlled by a United States person as such terms are defined in section 7(f)(2)(A) and 7(f)(2)(C) of the Securities Exchange Act of 1934.

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[1] See also reporting requirements for House Interparliamentary Groups, page 942.

ENFORCEMENT

Sec. 203. (a) Whoever fails to submit a report required under any rule or regulation issued under this title may be assessed a civil penalty not exceeding $10,000 in a proceeding brought under subsection (b) of this section.

(b) Whenever it appears to the Secretary that any person has failed to submit a report required under any rule or regulation issued under this title or has violated any rule or regulation issued hereunder, the Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule or regulation, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond, and additionally the sanction provided for failure to submit a report under subsection (a).

10. Executive Order 11269, as amended

Executive Order 11269, February 14, 1966, 31 F.R. 2813, 3 CFR, 1966–70 Comp., p. 534, as amended by Executive Order 11334, March 7, 1967, 32 F.R. 3933, 3 CFR, 1966–70 Comp., p. 627; Executive Order 11808, September 30, 1974, 39 F.R. 35563; Executive Order 11977, March 14, 1977, 42 F.R. 14671; Executive Order 12164, September 29, 1979, 44 F.R. 56681; and by Executive Order 12188, January 2, 1980, 45 F.R. 989

National Advisory Council on International Monetary and Financial Policies

By virtue of the authority vested in me by Reorganization Plan No. 4 of 1965 (30 F.R. 9353), and as President of the United States, it is ordered as follows:

Section 1. Establishment of Council. (a) There is hereby established the National Advisory Council on International Monetary and Financial Policies, hereinafter referred to as the Council.

(b) The Council shall be composed of the following members: the Secretary of the Treasury, who shall be the Chairman of the Council, the Assistant to the President for Economic Affairs, who shall be Deputy Chairman of the Council,[1] the Secretary of State, the United States Trade Representative,[2] the Secretary of Commerce, the Chairman of the Board of Governors of the Federal Reserve System, the Director of the International Development Cooperation Agency,[3] and the President of the Export-Import Bank of Washington.[4]

(c) Whenever matters within the jurisdiction of the Council may be of interest to Federal agencies not represented on the Council under Section 1(b) of this order, the Chairman of the Council may consult with such agencies and may invite them to designate representatives to participate in meetings and deliberations of the Council.

Sec. 2. Functions of the Council. (a) Exclusive of the functions delegated by the provisions of Section 3, below, and subject to the limitations contained in subsection (b) of this Section, all of the functions which are now vested in the President in consequence of their transfer to him effected by the provisions of Section 1(b) of Reorganization Plan No. 4 of 1965 are hereby delegated to the Council.

(b) The functions under Sections 4(a) and 4(b)(3)[5] of the Bretton Woods Agreements Act, including those made applicable to the In-

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[1] The Assistant to the President was added as a member by sec. 6(c) of Executive Order 11808, Sept. 30, 1974, 39 F.R. 35563.

[2] The reference to the United States Trade Representative was added by sec. 1-105(a) of Executive Order 12188.

[3] The reference to the Director of the International Development Cooperation Agency was added by E.O. 12164.

[4] See footnote 2 on page 345.

[5] For text see page 368.

ternational Finance Corporation, the Inter-American Development Bank, and the International Development Association (22 U.S.C. 286b (a) and (b)(3); 282b; 283b; 284b), to the extent that such functions consist of coordination of policies, are hereby delegated to the Council. The functions so delegated shall be deemed to include the authority to review proposed individual loan, financial, exchange, or monetary transactions to the extent necessary or desirable to effectuate the coordination of policies.

(c)[6] The Council shall perform with respect to the Asian Development Bank and African Development Fund,[7] the same functions as those delegated to it by subsections (a) and (b) of this section with respect to other international financial institutions.

Sec. 3. Functions of the Secretary of the Treasury. (a) Functions which are now vested in the President in consequence of their transfer to him effected by the provisions of Section 1(b) of Reorganization Plan No. 4 of 1965 are hereby delegated to the Secretary of the Treasury to the extent of the following:

(1) Authority, subject to the provisions of Section 7 of this Order,[8] to instruct representatives of the United States to international financial organizations.

(2) Authority provided for in Section 4(b)(4) of the Bretton Woods Agreements Act (22 U.S.C 286b(b)(4)).[9] Such authority, insofar as it relates to the development aspects of the policies, programs, or projects of the International Bank for Reconstruction and Development shall be exercised subject to the provisions of Section 7 of this Order.[10]

(b) In carrying out the functions delegated to him by subsection (a) of this Section the Secretary shall consult with the Council.

(c) Nothing in this order shall be deemed to derogate from the responsibilities of the Secretary of State with respect to the foreign policy of the United States.

(d)[6] The Secretary of the Treasury shall perform, with respect to the Asian Development Bank and African Development Fund,[7] the same functions as those delegated to him by subsections (a) and (b) of this section with respect to other international financial institutions.

(e)[11] The Secretary of the Treasury is hereby delegated the functions conferred upon the President by Section 203(b) and Section 207 of the Act of May 31, 1976 (90 Stat. 593 and 594, 22 U.S.C. 290g–1 and 290g–5), subject to the provisions of Section 7 of this Order.[8]

Sec. 4. Information. (a) All agencies and officers of the Government, including representatives of the United States to international financial organizations, (1) shall keep the Council or the Secretary of the Treasury, as the case may be, fully informed concerning the foreign loan, financial, exchange, and monetary transactions in which they engage or may engage or with respect to which they

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[6] Sec. 2(c) and sec. 3(d), were added by Executive Order 11334, Mar. 7, 1967, 32 F.R. 3933.

[7] The words "and African Development Fund" were added by Executive Order 11977, Mar. 14, 1977, 42 F.R. 14671.

[8] The reference to sec. 7 was added by Executive Order 12164.

[9] For text, see page 369.

[10] This sentence was added by E.O. 12164, effective Oct. 1, 1979.

[11] Subsection (e) was added by sec. 4 of Executive Order 11977, Mar. 14, 1977, 42 F.R. 14671.

have other responsibility, and (2) shall provide the Council, the Director of the International Development Cooperation Agency,[3] and the Secretary with such further information or data in their possession as the Council or the Secretary, as the case may be, may deem necessary to the appropriate discharge of the responsibilities of the Council, the Director of the International Development Cooperation Agency,[3] and Secretary under Sections 2 and 3 of this order, respectively.

(b) The Council shall from time to time transmit to all appropriate agencies and officers of the Government statements of the policies of the Council under this order and such other information relating to the above-mentioned transactions or to the functions of the Council hereunder as the Council shall deem desirable.

Sec. 5. Executive Order No. 10033. Section 2(a) of Executive Order No. 10033 of February 8, 1949, is hereby amended by substituting for the name "National Advisory Council on International Monetary and Financial Problems" the following: "National Advisory Council on International Monetary and Financial Policies."

Sec. 6. Effective date. The provisions of this order shall be effective as of January 1, 1966.

Sec. 7.[12] Functions of the Director of the International Development Cooperation Agency. As the principal international development advisor to the President, the Director of the International Development Cooperation Agency shall advise both the Secretary of the Treasury and the appropriate United States representatives to the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund on the development aspects of matters relating to those institutions and their activities.

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[12] Sec. 7 was added by Executive Order 12164, effective Oct. 1, 1979.

11. International Finance Corporation Act, as amended [1]

Public Law 84-350 [S. 1894], 69 Stat. 669, approved August 11, 1955, as amended by Public Law 87-185 [H.R. 6765], 75 Stat. 413, approved August 30, 1961; Public Law 89-126 [S. 1742], 79 Stat. 519, approved August 14, 1965; and by Public Law 95-118 [H.R. 5262], 91 Stat. 1067 at 1068, approved October 3, 1977

AN ACT To provide for the participation of the United States in the International Finance Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "International Finance Corporation Act."

ACCEPTANCE OF MEMBERSHIP

Sec. 2. The President is hereby authorized to accept membership for the United States in the International Finance Corporation (hereinafter referred to as the Corporation), provided for by the Articles of Agreement of the Corporation deposited in the archives of the International Bank for Reconstruction and Development.

GOVERNOR, EXECUTIVE DIRECTOR, AND ALTERNATES

Sec. 3. The governor and executive director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve as governor, director and alternates, respectively, of the Corporation.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

Sec. 4. The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect to the Corporation to the same extent as with respect to the International Bank for Reconstruction and Development. Reports with respect to the Corporation under paragraphs 5 and 6 of subsection (b) of section 4 of said Act, as amended, shall be included in the first report made thereunder after the establishment of the Corporation and in each succeeding report.

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

Sec. 5. Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the

[1] 22 U.S.C. 282-282i.

United States (a) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Corporation; (b) accept any amendment under article VII of the Articles of Agreement of the Corporation; (c) make any loan to the Corporation. The United States Governor of the Corporation is authorized to agree to an amendment to article III of the Articles of Agreement of the Corporation to authorize the Corporation to make investments of its funds in capital stock and to limit the exercise of voting rights by the Corporation unless exercise of such rights is deemed necessary by the Corporation to protect its interests, as proposed in the resolution submitted by the Board of Directors on February 20, 1961.[2] Unless Congress by law authorizes such action, no governor or alternate representing the United States shall vote for an increase of capital stock of the Corporation under article II, section 2(c)(ii), of the Articles of Agreement of the Corporation.

DEPOSITORIES

Sec. 6. Any Federal Reserve bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

Sec. 7. (a) The Secretary of the Treasury is authorized to pay the subscription of the United States to the Corporation and for this purpose is authorized to use as a public-debt transaction not to exceed $35,168,000 of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this subsection of the subscription of the United States to the Corporation and any repayment thereof shall be treated as public-debt transactions of the United States.

(b) Any payment of dividends made to the United States by the Corporation shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

Sec. 8. For the purpose of any action which may be brought within the United States or its Territories or possessions by or against the Corporation in accordance with the Articles of Agreement of the Corporation, the Corporation shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When the Corporation is a defendant in any such action, it

[2] This sentence added by act authorizing acceptance of an amendment to the articles of agreement of the International Finance Corporation permitting investment in capital stock, Public Law 87-185 (75 Stat. 413), approved Aug. 30, 1961.

may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

Sec. 9. The provisions of article V, section 5(d), and article VI, sections 2 to 9, both inclusive, of the Articles of Agreement of the Corporation shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Corporation.

Sec. 10.[3] The United States Governor of the Corporation is authorized to agree to the amendments of the Articles of Agreement of the Corporation to remove the prohibition therein contained against the Corporation lending to or borrowing from the International Bank for Reconstruction and Development, and to place limitations on such borrowings.

Sec. 11.[4] (a) The United States Governor of the Corporation is authorized—

(1) to vote for an increase of five hundred and forty thousand shares in the authorized capital stock of the Corporation; and

(2) if such increase becomes effective, to subscribe on behalf of the United States to one hundred and eleven thousand four hundred and ninety-three additional shares of the capital stock of the Corporation: *Provided, however,* That any commitment to make payment for such additional subscriptions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the increase in the United States subscription to the Corporation provided for in this section, there are hereby authorized to be appropriated, without fiscal year limitation, $111,493,000 for payment by the Secretary of the Treasury.[5]

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[3] Sec. 10 was added by sec. 2 of Public Law 89-126 (79 Stat. 519), approved Aug. 14, 1965.

[4] Sec. 11 was added by sec. 301 of Public Law 95-118 (91 Stat. 1068).

[5] Appropriation of funds for this increase in the U.S. subscription have been made in the following amounts and public laws: Fiscal year 1978—$38 million (Public Law 95-148); fiscal year 1979—$40 million (Public Law 95-481); fiscal year 1980—$33.4 million (Public Law 96-123) (only $19 million of the fiscal year 1980 appropriation spent); fiscal year 1981—$0; fiscal year 1982—$14.4 million (Public Law 97-121).

12. Inter-American Development Bank Act, as amended

Public Law 86-147 [S. 1928], 73 Stat. 299; 22 U.S.C. 283-283z-1, approved August 7, 1959, as amended by Public Law 88-259 [H.R. 7406], 78 Stat. 3, approved January 22, 1964; Public Law 89-6 [H.R. 45], 79 Stat. 23, approved March 24, 1965; Public Law 90-88 [H.R. 9547], 81 Stat. 226, approved September 22, 1967; Public Law 90-325 [H.R. 15364], 82 Stat. 168, approved June 4, 1968; Public Law 91-599 [H.R. 18306], 84 Stat. 1657, approved December 30, 1970; Public Law 92-246 [S. 748], 86 Stat. 59, approved March 10, 1972; Public Law 94-302 [H.R. 9721], 90 Stat. 591, approved May 31, 1976; Public Law 95-118 [H.R. 5262], 91 Stat. 1067 at 1070, approved October 3, 1977; Public Law 96-259 [S. 662], 94 Stat. 429, approved June 3, 1980; and by Public Law 97-35 [H.R. 3982], 95 Stat. 357 at 744, approved August 13, 1981

AN ACT To provide for the participation of the United States in the Inter-American Development Bank.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Inter-American Development Bank Act".

ACCEPTANCE OF MEMBERSHIP

Sec. 2. The President is hereby authorized to accept membership for the United States in the Inter-American Development Bank (hereinafter referred to as the Bank), provided for by the agreement establishing the bank (hereinafter referred to as the agreement) deposited in the archives of the Organization of American States.

GOVERNOR, ALTERNATE GOVERNOR, AND EXECUTIVE DIRECTOR

Sec. 3. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank and an alternate for the governor. The term of office for the governor and the alternate governor shall be five years, but each shall remain in office until a successor has been appointed.

(b) The President, by and with the advice and consent of the Senate, shall appoint an Executive Director of the Bank and an alternate Executive Director.[1] Except as provided for in article XV, section 3, of the agreement, the term of office for the Executive Director shall be three years, but he shall remain in office until a successor has been appointed.

(c) No person shall be entitled to receive any salary or other compensation from the United States for services as a governor, alternate governor, or Executive Director.

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[1] The phrase "and an alternate Executive" added by sec. 21(b) of Public Law 91-599 (84 Stat. 1658).

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

Sec. 4. The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect to the Bank to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund. Reports with respect to the Bank under paragraphs (5) and (6) of subsection (b) of section 4 of said Act, as amended, shall be included in the first report made thereunder after the establishment of the Bank and in each succeeding report.

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

Sec. 5. Unless Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional shares of stock under article II, section 3, or article IIA, section 2,[2] of the agreement; (b) request or consent to any change in the quota of the United States under article IV, section 3, of the agreement; (c) accept any amendment under article XII of the agreement; or (d) make a loan or provide other financing to the Bank, except that loans or other financing may be provided to the Bank by a United States agency created pursuant to an Act of Congress which is authorized by law to make loans or provide other financing to international organizations. Unless Congress by law authorizes such action, no governor or alternate appointed to represent the United States shall vote for any increase of capital stock of the Bank under article II, section 2, or article IIA, section 1,[3] of the agreement of any increase in the resources of the Fund for Special Operations under article IV, section 3(g) thereof.

DEPOSITORIES

Sec. 6. Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTION

Sec. 7. (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the purchase of thirty-five thousand shares of capital stock in the Bank, $350 million. In addition, there is hereby authorized to be appropriated, without fiscal year limitation, for payment of the subscription of the United States to the Fund for Special Operations, $100 million.[4]

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[2] The words ", or article IIA, section 2," were added by sec. 103(a)(2) of Public Law 94-302.

[3] The words "or article IIA, section 1," were added by sec. 103(a)(2) of Public Law 94-302.

[4] As of Oct. 23, 1962, Congress has appropriated the entire subscription. See the following appropriation acts: 73 Stat. 445 (1959); 75 Stat. 721 (1961) and 76 Stat. 1168.

Title II of the Foreign Aid and Related Agencies Appropriation Act, 1964, Public Law 88-258, 77 Stat. 862, approved Jan. 6, 1964, contained the following provision: "For payment of subscriptions to the Inter-American Development Bank for expansion of the Fund for Special Operations, $50,000,000 to remain available until expended: *Provided*, That this paragraph shall be effective only upon enactment into law of authorizing legislation." Sec. 2(b) of Public Law 88-259, 78 Stat. 3, approved Jan. 22, 1964, enacted such authorizing legislation.

(b) For the purpose of keeping to a minimum the cost to the United States of participation in the Bank, the Secretary of the Treasury, after paying the requisite part of the subscription and quota of the United States in the Bank required to be made under article II, section 4, and article IV, section 3, respectively, of the agreement, is authorized and directed to issue special notes of the United States from time to time, at par, and to deliver such notes to the Bank in exchange for dollars to the extent permitted by the agreement. The special notes provided for in this subsection shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include the purposes for which special notes are authorized and directed to be issued under this subsection, but such notes shall bear no interest, shall be nonnegotiable and shall be payable on demand of the Bank. The face amount of special notes issued to the Bank under the authority of this subsection and outstanding at any one time shall not exceed, in the aggregate, the amount of the subscription and quota of the United States actually paid to the Bank under article II, section 4, and article IV, section 3, respectively, of the agreement.

(c) Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTION

Sec. 8. For the purpose of any action which may be brought within the United States, its Territories or possessions, or the Commonwealth of Puerto Rico by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When the Bank is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

Sec. 9. The provisions of article X, section 4(c), and article XI, sections 2 to 9, both inclusive, of the agreement shall have full force and effect in the United States, its Territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Bank.

SECURITIES ISSUED BY BANK AS INVESTMENT SECURITIES FOR NATIONAL BANKS

Sec. 10. The last sentence of paragraph seven of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by in-

serting after the words "International Bank for Reconstruction and Development" the words "or the Inter-American Development Bank" and by striking the words "said Bank" and inserting in lieu thereof "either of said Banks".

SECURITIES ISSUED BY BANK AS EXEMPT SECURITIES; REPORT FILED WITH SECURITIES AND EXCHANGE COMMISSION

Sec. 11. (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with raising of funds for including in the Bank's [5] capital resources as defined in article II, section 5, and article IIA, section 4,[5] of the agreement, and any securities guaranteed by the Bank as to both the principal and interest to which the commitment in article II, section 4(a)(ii), or article IIA, section 3(c),[5] of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of paragraph (a)(2) of section 3 of the Act of May 27, 1933, as amended (15 U.S.C. 77c), and paragraph (a)(12) of section 3 of the Act of June 6, 1934, as amended (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

CERTAIN REPORTS REQUIRED

Sec. 12. The reports of the National Advisory Council on International Monetary and Financial Problems provided for in section 4(b)(6) of the Bretton Woods Agreements Act (and referred to in section 4 of this Act) shall also cover and include the effectiveness of the provisions of section 11 of this Act and the exemption for securities issued by the Bank provided by section 5136 of the Revised Statutes in facilitating the operations of the Bank and the development of the economic resources of member countries of the Bank and the recommendations of the Council as to any modifications it may deem desirable in the provisions of this Act.

Sec. 13.[6] The United States Governor of the Bank is hereby authorized (1) to vote (A) for increases in the authorized capital stock

[5] Sec. 103(a)(3) of Public Law 94-302 deleted the word "ordinary" following "Banks", and added the words "and article IIA, section 4." and "or article IIA, section 3(c),".

[6] This section was added by sec. 1 of Public Law 88-259, 78 Stat. 3, approved Jan. 22, 1964. Sec. 2(a) of Public Law 88-259 authorized the appropriation of $411,760,000, without fiscal year limitation, for payment of the increased United States subscription under sec. 13.

of the Bank under article II, section 2, of the agreement, and (B) for an increase in the resources of the Fund for Special Operations under article IV, section 3, of the agreement, all as recommended by the Executive Directors in a report dated March 18, 1963, to the Board of Governors of the Bank; (2) to agree on behalf of the United States to subscribe to its proportionate share of the $1,000,000,000 increase in the authorized callable capital stock of the Bank; and (3) to vote for an amendment to article VIII, section 3, of the agreement to provide that the Board of Governors may, upon certain conditions, increase by one the number of Executive Directors.

AUDIT [7]

Sec. 14. (a) The Secretary of the Treasury shall instruct the United States Executive Director to propose the establishment by the Board of Executive Directors of a program of selective but continuing independent and comprehensive audit of the Inter-American Development Bank, in accordance with such terms of reference as the Board of Executive Directors itself (or through a subcommittee), may prescribe. Such proposal shall provide that the audit reports be submitted to the Board of Executive Directors and to the Board of Governors.

(b) The Comptroller General of the United States shall prepare for the Secretary of the Treasury the scope of the audit and the auditing and reporting standards for the use of the United States Executive Directors in assisting in the formulation of the terms of reference.

(c) The reports of the National Advisory Council on International Monetary and Financial Policies to the Congress shall include, among other things, an appraisal of the effectiveness of the implementation and administration of the loans made by the Bank based upon the audit reports. The Comptroller General shall periodically review the reports of audit and findings issued and report to the Secretary of the Treasury and the Congress any suggestions he might have in improving the scope of the audit or auditing and reporting standards of the independent auditing firm, group, or staff.

FUND FOR SPECIAL OPERATIONS OF THE BANK [8]

Sec. 15. (a) The United States Governor of the Bank is hereby authorized to vote in favor of the resolution entitled "Increase of Resources of the Fund for Special Operations" proposed by the Governors at their annual meeting in April 1964, and now pending before the Board of Governors of the Bank. Upon the adoption of such resolution, the United States Governor is authorized to agree, on behalf of the United States, to pay to the Fund for Special Operations of the Bank, the sum of $750,000,000, in accordance with and subject to the terms and conditions of such resolution.

(b) There is hereby authorized to be appropriated without fiscal year limitation, for the United States share in the increase in the

[7] Sec. 14 was added by Public Law 90-88, 81 Stat. 227, approved Sept. 22, 1967.

[8] This section was added by Public Law 89-6, 70 Stat. 23, approved Mar. 24, 1965, as sec. 14 and renumbered by Public Law 90-88, 81 Stat. 226, approved Sept. 22, 1967.

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resources of the Fund for Special Operations of the Bank, the sum of $750,000,000.

(c) With respect to any dollars herein provided, the voting power of the United States shall be exercised for the purpose of disapproving any loan from the Fund for Special Operations of the Bank for any project, enterprise, or activity in any country, during any period for which the President has suspended assistance to the government of such country because of any action taken on or after January 1, 1962, by the government of such country or any government agency or subdivision within such country as specified in paragraph (A), (B), or (C) of subsection (e)(1) of section 620 of the Foreign Assistance Act of 1961, as amended, and the failure of such country within a reasonable time to take appropriate steps to discharge its obligations or provide relief in accordance with the provisions of such subsection.

Sec. 16.[9] (a) The United States Governor of the Bank is hereby authorized to vote in favor of the resolution entitled "Increase of $1,200,000,000 in Resources of Fund for Special Operations" proposed by the Governors at their annual meeting in April 1967 and now pending before the Board of Governors of the Bank. Upon the adoption of such resolution, the United States Governor is authorized to agree, on behalf of the United States, to pay to the Fund for Special Operations of the Bank, the sum of $900,000,000, in accordance with and subject to the terms and conditions of such resolution, and subject to the further condition that in consideration of the United States balance-of-payments deficit any local cost financing, by project or otherwise, with the funds authorized under this section be held to the minimum possible level. The United States Governor is also authorized to vote in favor of the amendment to Annex C of the agreement, now pending before the Board of Governors of the Bank, to modify the procedure employed in the election of Executive Directors.

(b) There is hereby authorized to be appropriated without fiscal year limitation, for the United States share in the increase in the resources of the fund for Special Operations of the Bank, the sum of $900,000,000.

(c) The voting power of the United States shall be exercised for the purpose of disapproving any loan which might assist the recipient country directly or indirectly to acquire sophisticated or heavy military equipment.

Sec. 17.[10] (a) The United States Governor of the Bank is hereby authorized (1) to vote for an increase in the authorized capital stock of the Bank under article II, section 2, of the agreement as recommended by the Board of Executive Directors in its report of April 1967, to the Board of Governors of the Bank; and (2) to agree on behalf of the United States to subscribe to its proportionate share of the $1,000,000,000 increase in the authorized callable capital stock of the Bank.

(b) There is hereby authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury of

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[9] Sec. 16 was added by Public Law 90-88, 81 Stat. 226, approved Sept. 22, 1967.
[10] Sec. 17 was added by Public Law 90-325, 82 Stat. 168, approved June 4, 1968.

the increased United States subscription to the capital stock of the Inter-American Development Bank, $411,760,000.

Sec. 18.[11] (a) The United States Governor of the Bank is hereby authorized to vote in favor of the two resolutions proposed by the Governors at their annual meeting in April 1970 and now pending before the Board of Governors of the Bank, which provide for (1) an increase in the authorized capital stock to the Bank and additional subscriptions of members thereto and (2) an increase in the resources of the Fund for Special Operations and contributions thereto. Upon adoption of such resolutions the United States Governor is authorized to agree on behalf of the United States (1) to subscribe to eighty-two thousand three hundred and fifty-two shares of $10,000 par value of the increase in the authorized capital stock of the Bank of which sixty-seven thousand three hundred and fifty-two shall be callable shares and fifteen thousand shall be paid in and (2) to pay to the Fund for Special Operations an initial annual installment of $100,000,000 and, upon further authorization by the Congress, two subsequent annual installments of $450,000,000 each, in accordance with and subject to the terms and conditions of such resolutions.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of (1) three annual installments of $50,000,000 each for the United States subscription to paid-in capital stock of the Bank; (2) two installments of $336,760,000 each for the United States subscription to the callable capital stock of the Bank; and (3) one installment of $100,000,000 for the United States share of the increase in the resources of the Fund for Special Operations of the Bank.

Sec. 19.[12] (a) The United States Governor of the Bank is authorized to pay to the Fund for Special Operations two annual installments of $450,000,000 each in accordance with and subject to the terms and conditions of the resolution adopted by the Board of Governors on December 31, 1970, concerning an increase in the resources of the Fund for Special Operations and contributions thereto.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of the two annual installments of $450,000,000 each for the United States share of the increase in the resources of the Fund for Special Operations of the Bank.

Sec. 20.[12] The United States Governor of the Bank is authorized to agree to amendments to the provisions of the articles of agreement as provided in proposed Board of Governors resolutions entitled (a) "Amendment of the Provisions of the Agreement Establishing the Bank with Respect to Membership and to Related Matters" and (b) "Amendment of the Provisions of the Agreement Establishing the Bank with Respect to the Election of Executive Directors."

Sec. 21.[12] The President shall instruct the United States Executive Director of the Bank to vote against any loan or other utiliza-

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[11] Sec. 18 was added by sec. 21 of Public Law 91-599, 84 Stat. 1658, approved Dec. 30, 1970.
[12] Secs. 19 through 22 were added by Public Law 92-246, 86 Stat. 59, approved Mar. 10, 1972.

tion of the funds of the Bank for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) take steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

Sec. 22.[12] The Secretary of the Treasury shall instruct the United States Executive Director of the Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country, or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents, or from entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notifies the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

Sec. 23.[13] The United States Governor of the Bank is authorized to vote for three proposed resolutions of the Board of Governors entitled (a) "Amendments to the Agreement Establishing the Bank with respect to the Creation of the Inter-Regional Capital Stock of the Bank and to Related Matters", (b) "General Rules Governing Admission of Nonregional Countries to Membership in the Bank", and (c) "Increase in the Authorized Callable Ordinary Capital Stock and Subscriptions Thereto in Connection with the Admission of Nonregional Member Countries", which were submitted to the Board of Governors pursuant to a resolution of the Board of Executive Directors approved on March 4, 1975.

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[13] 22 U.S.C. 283t. Sec. 23 was added by sec. 103(a) of Public Law 94-302.

Sec. 24.[14] The United States Governor of the Bank is authorized to agree to the amendments to article II, section 1(b) and article IV, section 3(b) of the Agreement Establishing the Bank, as proposed by the Board of Executive Directors, to provide for membership for the Bahamas and Guyana in the Bank at such times and in accordance with such terms as the Bank may determine.

Sec. 25.[15] The United States Governor of the Bank is authorized to agree to the amendments to article III, sections 1, 4, and 6(b) of the Agreement Establishing the Bank, as proposed by the Board of Executive Directors, to provide for lending to the Caribbean Development Bank.

Sec. 26.[16] (a) The United States Governor of the Bank is hereby authorized to vote in favor of two resolutions proposed by the Governors at a special meeting in July 1975, and now pending before the Board of Governors of the Bank, which provide for (1) an increase in the authorized capital stock of the Bank and additional subscriptions of members thereto and (2) an increase in the resources of the Fund for Special Operations and contributions thereto. Upon adoption of such resolutions, the United States Governor is authorized to agree on behalf of the United States (1) to subscribe to ninety-nine thousand four hundred and seventy-four shares of $10,000 par value of the increase in the authorized capital stock of the Bank of which eight-nine thousand five hundred and twenty-six shall be callable shares and nine thousand nine hundred and forty-eight shall be paid in and (2) to contribute to the Fund for Special Operations $600,000,000, in accordance with and subject to the terms and conditions of such resolutions.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of (1) $1,199,997,873 for the United States subscription to the capital stock of the Bank and (2) $600,000,000 for the United States share of the increase in the resources of the Fund for Special Operations: *Provided, however,* That not more than $15,677,000 may be made available to the Fund for Special Operations for the fiscal year 1982.[17] [18]

Sec. 27.[19] (a) The United States Governor of the Bank is hereby authorized to vote for an additional increase of one hundred and eight thousand shares of $10,000 par value in the authorized callable capital stock of the Bank as recommended in the resolution of the Board of Governors entitled "Increase of US$4 Billion in the Authorized Capital Stock and Subscriptions Thereto". Upon adoption of a Board of Governors resolution increasing the authorized

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[14] 22 U.S.C. 283u. Sec. 24 was added by sec. 103(a) of Public Law 94-302.

[15] 22 U.S.C. 283v. Sec. 25 was added by sec. 103(a) of Public Law 94-302.

[16] 22 U.S.C. 283w. Sec. 26 was added by sec. 101 of Public Law 94-302.

[17] The proviso clause was added by sec. 1351(c) of Public Law 97-35 (95 Stat. 744).

[18] Appropriations for U.S. payments authorized in sec. 26 and sec. 27 have been provided in the following amounts and acts: Fiscal year 1977—Bank capital stock, $376 million ($56 million paid-in capital; $320 million callable capital) (Public Laws 94-441 and 95-26); FSO, $160 million (Public Law 95-26); fiscal year 1978—Bank capital stock, $365.2 million ($36.7 million paid-in capital; $328.5 million callable capital); FSO, $114.7 million (Public Law 95-148); fiscal year 1979—Bank capital stock, $588.7 million ($27.3 million paid-in capital; $561.4 million callable capital); FSO, $175 million (Public Law 95-481); fiscal year 1980—$0; fiscal year 1981—FSO, $25 million (Public Law 96-536); fiscal year 1982—$0; fiscal year 1983—FSO, $46.7 million (Public Law 97-377).

[19] 22 U.S.C. 283x. Sec. 27 was added by sec. 101 of Public Law 94-302.

capital stock of the Bank by such amount, the United States Governor is authorized to agree on behalf of the United States to subscribe to thirty-seven thousand three hundred and three shares of $10,000 par value of such additional increase in callable capital in accordance with and subject to the terms and conditions of such resolution.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated, without fiscal year limitation, $450,002,218 for payment by the Secretary of the Treasury.[17]

Sec. 28.[20] (a) The United States Executive Director of the Bank shall propose to the Board of Executive Directors of the Bank the adoption of a resolution providing (1) that the development and utilization of light-capital or intermediate technologies should be accepted as major facets of the Bank's development strategy, and (2) that such light-capital or intermediate technologies should be developed and utilized as soon as possible in all Bank activities. Such resolution shall further provide that, by the close of the calendar year 1977, some projects that employ primarily such light-capital or intermediate technologies shall be designed and approved.

(b) The United States Governor of the Bank shall report to the Congress no later than six months after the date of the enactment of this section on the proposal made under subsection (a), and no later than twelve months after such date on the progress that has been made with respect to such proposal.

Sec. 29.[21] (a) The United States Governor of the Bank is authorized to vote for two resolutions which were proposed by the Governors at a special meeting in December 1978 and are pending before the Board of Governors of the Bank. These resolutions provide for (1) an increase in the authorized capital stock of the Bank and additional subscriptions thereto, and (2) an increase in the resources of the Fund for Special Operations and contributions thereto. Upon adoption of these resolutions, the United States Governor is authorized on behalf of the United States (A) to subscribe to two hundred twenty-seven thousand eight hundred and ninety-six shares of the increase in the authorized capital stock of the Bank, of which two hundred ten thousand eight hundred and four shall be callable and seventeen thousand and ninety-two shall be paid-in, and (B) to contribute to the Fund for Special Operations $630,000,000; except that any commitment to make such subscriptions to paid-in and callable capital stock and to make such contributions to the fund for Special Operations shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) In order to pay for the increase in the United States subscription and contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury (1) $2,474,287,189 for the United

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[20] 22 U.S.C. 283z. This section was added by sec. 104 of Public Law 94-302. Originally added as sec. 29, it was redesignated as sec. 28 by sec. 101 of Public Law 96-259 (94 Stat. 429). The original sec. 28, which was added by sec. 103(a) of Public Law 94-302 and had directed the U.S. Executive Director of the Bank to vote against any loan or assistance to any country engaging in violations of human rights, was repealed by sec. 702 of Public Law 95-118 (91 Stat. 1070). For new references concerning U.S. activity in the Bank and human rights, see title VII of Public Law 95-118 (page 433).

[21] 22 U.S.C. 283z-1. Sec. 29 was added by sec. 101(2) of Public Law 96-259 (94 Stat. 429).

States subscription to the capital stock of the Bank, and (2) $630,000,000 for the United States share of the increase in the resources of the Fund for Special Operations: *Provided, however,* That for contributions to the Fund for Special Operations, not more than $175,000,000 may be made available for the fiscal year 1982, and not more than $105,000,000 may be made available for the fiscal year 1983.[22]

(c) For the purpose of keeping to a minimum the cost to the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the Fund for Special Operations authorized by this section by letter of credit in four annual installments; and

(2) shall take the steps necessary to obtain a certification from the Bank that any undisbursed balances resulting from drawdowns on such letter of credit will not exceed at any time the United States share of expected disbursement requirements for the following three-month period.

(d) None of the funds authorized to be appropriated by this section may be used for any form of assistance to any country which is not a member of the Bank.

Sec. 30.[23] (a) The United States Governor of the Bank is authorized on behalf of the United States to contribute to the Fund for Special Operations $70,000,000: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for a portion of the increase in the United States subscription to the capital stock of the Bank provided for in section 29(a) and for the United States contribution to the Fund for Special Operations provided for in this section, there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury, (1) $274,920,799 for the United States subscription, and (2) $70,000,000 for the United States contribution to the Fund for Special Operations: *Provided, however,* That no funds may be made available for such contribution to the Fund for Special Operations for the fiscal year 1982.[24]

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[22] The proviso clause was added by sec. 1351(b) of Public Law 97-35 (95 Stat. 744).

Appropriations for U.S. payments authorized in sec. 29 have been provided in the following amounts and acts: Fiscal year 1980—Bank capital stock, $588.7 million ($27.3 million paid-in capital; $561.4 million callable capital); FSO, $175 million (Public Law 96-123); fiscal year 1981—Bank capital stock, $612.2 million ($51.5 million paid-in capital; $560.7 million callable capital); FSO, $175 million (Public Law 96-536); fiscal year 1982—Bank capital stock, $657.7 million ($48.1 million paid-in capital; $609.6 million callable capital); FSO, $173.2 million (Public Law 97-121); fiscal year 1983—Bank capital stock, $615.6 million ($41.8 million paid-in capital; $573.8 million callable capital); FSO, $105 million (Public Law 97-377).

[23] 22 U.S.C. 283z-2. Sec. 30 was added by sec. 1351(a) of Public Law 97-35 (95 Stat. 744).

[24] The Further Continuing Appropriations Act, 1983, (Public Law 97-377) provides the following funding during fiscal year 1983 for this authorization: Bank capital stock, $274.9 million ($20.6 million paid-in capital; $254.3 million callable capital); FSO, $70 million.

13. International Development Association Act, as amended

Public Law 86-565 [H.R. 11001], 74 Stat. 293; 22 U.S.C. 284, 284a-284e, 284g, 284o, 284t, approved June 30, 1960, as amended by Public Law 88-310 [S. 2214], 78 Stat. 200, approved May 26, 1964; Public Law 91-14 [H.R. 33], 83 Stat. 10, approved May 23, 1969; Public Law 92-247 [S. 2010], 86 Stat. 60, approved March 10, 1972; Public Law 93-373 [S. 2665], 88 Stat. 445, approved August 14, 1974; Public Law 95-118 [H.R. 5262], 91 Stat. 1067 at 1068, approved October 3, 1977; and by Public Law 97-35 [H.R. 3982], 95 Stat. 357 at 740, approved August 13, 1981

AN ACT To provide for the participation of the United States in the International Development Association.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "International Development Association Act".

ACCEPTANCE OF MEMBERSHIP

Sec. 2. The President is hereby authorized to accept membership for the United States in the International Development Association (hereinafter referred to as the "Association"), provided for by the Articles of Agreement (hereinafter referred to as the "Articles") of the Association deposited in the archives of the International Bank for Reconstruction and Development.

GOVERNOR, EXECUTIVE DIRECTOR, AND ALTERNATES

Sec. 3. The Governor and Executive Director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve as Governor, Executive Director and alternates, respectively, of the Association.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

Sec. 4. The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect to the Association to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund. Reports with respect to the Association under paragraphs (5) and (6) of subsection (b) of section 4 of said Act, as amended, shall be included in the first report made thereunder after the establishment of the Association and in each succeeding report.

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

Sec. 5. Unless Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional funds under article III, section 1, of the articles; (b) accept any amendment under article IX of the articles; or (c) make a loan or provide other financing to the Association.

DEPOSITORIES

Sec. 6. Any Federal Reserve bank which is requested to do so by the Association shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

Sec. 7. (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the subscription of the United States to the Association, $320,290,000.[1]

(b)[2] The United States Governor is hereby authorized (1) to vote for an increase in the resources of the Association and (2) to agree on behalf of the United States to contribute to the Association the sum of $312 million, both as recommended by the Executive Directors, in a report dated September 9, 1963, to the Board of Governors of the Association. There is hereby authorized to be appropriated out of funds supplied by the Nation's taxpayers or out of funds borrowed on their credit, without fiscal year limitation, $312 million to provide the United States share of the increase in the resources of the Association.

(c)[3] For the purpose of keeping to a minimum the cost to the United States of participation in the Association, the Secretary of the Treasury is authorized and directed to issue special notes of the United States from time to time, at par, and to deliver such notes to the Association in exchange for dollars to the extent permitted by the articles. The special notes provided for in this subsection shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include the purposes for which special notes are authorized and directed to be issued under this subsection, but such notes shall bear no interest, shall be nonnegotiable, and shall be payable on demand of the Association. The face amount of special notes issued to the Association under the authority of this subsection and outstanding at any one time shall not exceed in the aggregate, the amount actually paid to the Association under the articles.

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[1] The United States subscription was payable in five annual installments (see art. II, sec. 2, IDA Articles of Agreement, vol. III, page 486), one of $73,666,700 and four of $61,656,000.

[2] This subsection was added by sec. 1 of Public Law 88-310 (78 Stat. 200) approved May 26, 1964.

[3] The following changes were made in this subsection by sec. 2 of Public Law 88-310; the subsection was redesignated as "(c)"; the phrase ", after paying the requisite part of the subscription of the United States in the Association required to be made under the articles," which appeared after the word "treasury" was deleted; and in the last sentence the words "of the subscription of the United States" which preceded the word "actually" were deleted.

(d)[4] Any payment made to the United States by the Association as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

Sec. 8. For the purpose of any action which may be brought within the United States, its possessions, or the Commonwealth of Puerto Rico, by or against the Association in accordance with the articles, the Association shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Association shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When the Association is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES, AND PRIVILEGES

Sec. 9. The provisions of article VII, section 5(d), and article VIII, sections 2 to 9, both inclusive, of the articles shall have full force and effect in the United States, its possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Association.

Sec. 10.[5] The United States Governor is hereby authorized (1) to vote in favor of the second replenishment resolutions providing for an increase in the resources of the Association, and (2) to agree on behalf of the United States to contribute to the Association the sum of $480,000,000, as recommended by the Executive Directors in a report dated March 8, 1968, to the Board of Governors of the Association. There is hereby authorized to be appropriated, without fiscal year limitation, $480,000,000 for payment by the Secretary of the Treasury of the United States share of the increase in the resources of the Association.

Sec. 11.[6] The United States Governor is hereby authorized to agree on behalf of the United States to contribute to the Association three annual installments of $320,000,000 each as recommended in the "Report of the Executive Directors to the Board of Governors on Additions to IDA Resources: Third Replenishment," dated July 21, 1970. There is hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of three annual installments of $320,000,000 each for the United States share of the increase in the resources of the Association.

Sec. 12.[6] The President shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the International Development Association to vote

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[4] This subsection was redesignated "(d)" by sec. 1 of Public Law 88-310.
[5] Sec. 10 was added by Public Law 91-14, 83 Stat. 10, approved May 23, 1969.
[6] Secs. 11 through 13 were added by Public Law 92-247, 86 Stat. 60, Mar. 10, 1972.

against any loan or other utilization of the funds of the Bank and the Association for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

Sec. 13. The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the International Development Association to vote against any loan or other utilization of the funds of the Bank and the Association for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country, or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents, or from entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notifies the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

Sec. 14.[7] (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association four annual installments of $375,000,000 each as the United States contribution to the Fourth Replenishment of the Resources of the Association.

(b) In order to pay for the United States contribution, there is hereby authorized to be appropriated without fiscal year limitation four annual installments of $375,000,000 each for payment by the Secretary of the Treasury.

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[7] Secs. 14 and 15 were added by Public Law 93-373, 88 Stat. 445, approved Aug. 14, 1974.

Sec. 15. * * * [Repealed—1977][8]

Sec. 16.[9] (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $2,400,000,000 as the United States contribution to the fifth replenishment of the Resources of the Association: *Provided, however,* That any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there are hereby authorized to be appropriated, without fiscal year limitation, $2,400,000,000 for payment by the Secretary of the Treasury.

Sec. 17.[10] (a) The United States Governor is authorized to agree on behalf of the United States to pay to the Association $3,240,000,000 as the United States contribution to the sixth replenishment of the resources of the Association: *Provided, however,* That any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contributions provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $3,240,000,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than $850,000,000 of such sum may be made available for the fiscal year 1982 and not more than $945,000,000 of such sum may be made available for the fiscal year 1983.[11]

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[8] Sec. 15, which directed the U.S. Governor to vote against any loan or assistance to any country which develops a nuclear explosive device (unless such country was a party to the Treaty on the Non-Proliferation of Nuclear Weapons), was repealed by sec. 702 of Public Law 95-118 (91 Stat. 1070).

[9] Sec. 16 was added by sec. 401 of Public Law 95-118 (91 Stat. 1068).

[10] Sec. 17 was added by sec. 1321 of Public Law 97-35 (95 Stat. 740).

[11] Appropriations for U.S. payments authorized in sec. 17 have been provided in the following amounts and acts: fiscal year 1981—$500 million (Public Law 97-12); fiscal year 1982—$700 million (Public Law 97-121); fiscal year 1983—$700,000,000 (Public Law 97-377).

14. Asian Development Bank, as amended [1]

Public Law 89-369 [H.R. 12563], 80 Stat. 71, approved March 16, 1966, as amended by Public Law 92-245 [S. 749], 86 Stat. 57, approved March 10, 1972, and by Public Law 93-189 [S. 1443], 87 Stat. 714 at 732, approved December 17, 1973 [1]; Public Law 93-537 [S. 2193], 88 Stat. 1735, approved December 22, 1974; Public Law 95-118 [H.R. 5262], 91 Stat. 1067 at 1068, approved October 3, 1977; Public Law 96-259 [S. 662], 94 Stat. 429 at 430, approved June 3, 1980; Public Law 96-465 [H.R. 6790], 94 Stat. 2071 at 2160, approved October 17, 1980; and by Public Law 97-35 [H.R. 3982], 95 Stat. 357 at 744, approved August 13, 1981

AN ACT To provide for the participation of the United States in the Asian Development Bank.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Asian Development Bank Act".

ACCEPTANCE OF MEMBERSHIP

Sec. 2. The President is hereby authorized to accept membership for the United States in the Asian Development Bank (hereinafter referred to as the "Bank") provided for by the agreement establishing the Bank (hereinafter referred to as the "agreement") deposited in the archives of the United Nations.

Sec. 3. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternative for the Governor, and a Director of the Bank.

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor. The Director may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received by him from the Bank, will equal those authorized for a chief of mission under the Foreign Service Act of 1980.[2]

Sec. 4. (a) The policies and operations of the representatives of the United States on the Bank shall be coordinated with other United States policies in such manner as the President shall direct.

(b) An annual report with respect to United States participation in the Bank shall be submitted to the Congress by such agency or officer as the President shall designate.

Sec. 5. Unless the Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional shares of stock of the Bank; (b) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which

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[1] 22 U.S.C. 285-285w.

[2] The references to the chief of mission and to the Foreign Service Act of 1980 were inserted by sec. 2206(a)(1) of Public Law 96-465 (94 Stat. 2160), effective Feb. 15, 1981. The references formerly pertained to the Chief of Mission, class 2, and to the Foreign Service Act of 1946, respectively.

would change the purpose or functions of the Bank; or (c) make a loan or provide other financing to the Bank, except that funds for technical assistance not to exceed $1,000,000 in any one year may be provided to the Bank by a United States agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

DEPOSITORIES

Sec. 6. Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

Sec. 7. (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the purchase of twenty thousand shares of capital stock of the Bank, $200,000,000.

(b) Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

Sec. 8. For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office or agency in the United States is located, and any such action to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in title 28, section 460, United States Code, shall have original jurisdiction of any such action. When the Bank is defendant in any action in a State court, it may, at any time before the trial thereof, remove such action into the direct court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES, AND PRIVILEGES

Sec. 9. The agreement, and particularly articles 49 through 56, shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Bank. The President, at the time of deposit of the instrument of acceptance of membership by the United States in the Bank, shall also deposit a declaration that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals.

SECURITIES ISSUED BY BANK AS INVESTMENT SECURITIES FOR NATIONAL BANKS

Sec. 10. The last sentence of paragraph 7 of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by striking the word "or" after the words "International Bank for Reconstruction and Development" and inserting a comma in lieu thereof, and by inserting after the words "the Inter-American Development Bank" the words "or the Asian Development Bank".

SECURITIES ISSUED BY BANK AS EXEMPT SECURITIES; REPORT FILED WITH SECURITIES AND EXCHANGE COMMISSION

Sec. 11. (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 7 of the agreement and any securities guaranteed by the Bank as to both principal and interest to which the commitment in article 6, section 5, of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of paragraph (a)(2) of section 3 of the Act of May 27, 1933, as amended (15 U.S.C. 77c), and paragraph (a)(12) of section 3 of the Act of June 6, 1934, as amended (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

Sec. 12.[3] (a) Subject to the provisions of this Act, the United States Governor of the Bank is authorized to enter into an agreement with the Bank providing for a United States contribution of $100,000,000 to the Bank in two annual installments of $60,000,000 and $40,000,000, beginning in fiscal year 1972. This contribution is referred to hereinafter in this Act as the "United States Special Resources".

(b) The United States Special Resources shall be made available to the Bank pursuant to the provisions of this Act and article 19 of the Articles of Agreement of the Bank, and in a manner consistent with the Bank's Special Funds Rules and Regulations.

Sec. 13.[3] (a) The United States Special Resources shall be used to finance specific high priority development projects and programs in developing member countries of the Bank with emphasis on such projects and programs in the Southeast Asia region.

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[3] Secs. 12 through 19 were added by Public Law 92-245, 86 Stat. 59, approved Mar. 10, 1972.

(b) The United States Special Resources shall be used by the Bank only for—

(1) making development loans on terms which may be more flexible and bear less heavily on the balance of payments than those established by the Bank for its ordinary operations; and

(2) providing technical assistance credits on a reimbursable basis.

(c)(1) The United States Special Resources may be expended by the Bank only for procurement in the United States of goods produced in, or services supplied from, the United States, except that the United States Governor, in consultation with the National Advisory Council on International Monetary and Financial Policies, may allow eligibility for procurement in other member countries from the United States Special Resources if he determines that such procurement eligibility would materially improve the ability of the Bank to carry out the objectives of its special funds resources and would be compatible with the international financial position of the United States.

(2) The United States Special Resources may be used to pay for administrative expenses arising from the use of the United States Special Resources, but only to the extent such expenses are not covered from the Bank's service fee or income from use of United States Special Resources.

(d) All financing of programs and projects by the Bank from the United States Special Resources shall be repayable to the Bank by the borrowers in United States dollars.

Sec. 14.[3] (a) The letters of credit provided for in section 15 shall be issued to the Bank only to the extent that at the time of issuance the cumulative amount of the United States Special Resources provided to the Bank (A) constitute a minority of all special funds contributions to the Bank, and (B) are no greater than the largest cumulative contribution of any other single country contributing to the special funds of the Bank.

(b) The United States Governor of the Bank shall give due regard to the principles of (A) utilizing all special funds resources on an equitable basis, and (B) significantly shared participation by other contributors in each special fund to which United States Special Resources are provided.

Sec. 15.[3] The United States Special Resources will be provided to the Bank in the form of a nonnegotiable, noninterest-bearing, letter of credit which shall be payable to the Bank at par value on demand to meet the cost of eligible goods and services, and administrative costs authorized pursuant to section 13(c) of this Act.

Sec. 16.[3] The United States shall have the right to withdraw all or part of the United States Special Resources and any accrued resources derived therefrom under the procedures provided for in section 8.03 of the Special Funds Rules and Regulations of the Bank.

Sec. 17.[3] For the purpose of providing United States Special Resources to the Bank there is hereby authorized to be appropriated $100,000,000[4] all of which shall remain available until expended.

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[4] Sec. 28 of Public Law 93-189 (87 Stat. 732) struck out $60,000,000 for fiscal year 1972 and $40,000,000 for fiscal year 1973 and inserted $100,000,000.

Sec. 18.[3] The President shall instruct the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

Sec. 19.[3] The Secretary of the Treasury shall instruct the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country, or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents, or from entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notifies the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

Sec. 20.[5] (a) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to thirty thousand additional shares of the capital stock of the Bank in accordance with and subject to the terms and conditions of Resolution Numbered 46 adopted by the Bank's Board of Governors on November 30, 1971.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated without fiscal year limitation $361,904,726 for payment by the Secretary of the Treasury.

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[5] Secs. 20 and 21 were added by Public Law 93-537, 88 Stat. 1735, approved Dec. 22, 1974.

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Sec. 21.[5] (a) The United States Governor of the Bank is hereby authorized to agree to contribute on behalf of the United States $50,000,000 to the special funds of the Bank. This contribution shall be made available to the Bank pursuant to the provisions of article 19 of the articles of agreement of the Bank.

(b) In order to pay for the United States contribution to the special funds, there is hereby authorized to be appropriated without fiscal year limitation $50,000,000 for payment by the Secretary of the Treasury.

Sec. 22.[6] (a) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to sixty-seven thousand and five hundred additional shares of the capital stock of the Bank: *Provided, however,* That any subscription to additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.[7]

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there are hereby authorized to be appropriated without fiscal year limitation $814,286,250 for payment by the Secretary of the Treasury.[8]

Sec. 23.[6] (a) The United States Governor of the Bank is hereby authorized to contribute on behalf of the United States $180,000,000 to the Asian Development Fund, a special fund of the Bank: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are hereby authorized to be appropriated without fiscal year limitation $180,000,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than $14,116,177 may be made available for such contribution for the fiscal year 1982.[9]

Sec. 24.[10] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States $378,250,000 to the Asian Development Fund, a special fund of the Bank, except that any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are au-

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[6] Secs. 22 and 23 were added by sec. 501 of Public Law 95-118 (91 Stat. 1068).

[7] The proviso clause was amended and restated by sec. 1353 of Public Law 97-35 (95 Stat. 745). The clause previously read as follows: "That any subscription to additional shares shall be made only after the amount required for such subscription has been appropriated."

[8] Appropriations for U.S. payments authorized in sec. 22 have been provided in the following amounts and acts: fiscal year 1978—$168 million ($16.8 million paid-in capital; $151.2 million callable capital) (Public Law 95-481); fiscal year 1979—$194.5 million ($19.5 million paid-in capital; $175 million callable capital) (Public Law 95-481); fiscal year 1980—$153.7 million ($15.4 million paid-in capital; $138.3 million callable capital) (Public Law 96-123); fiscal year 1981—$248.4 million ($24.8 million paid-in capital; $223.4 million callable capital) (Public Law 96-536); fiscal year 1982—$47.3 million ($4.7 million paid-in capital; $42.6 million callable capital) (Public Law 97-121); fiscal year 1983—$2.5 million ($0.3 million paid-in capital; $2.2 million callable capital) (Public Law 97-377).

[9] The proviso clause was added by sec. 1352(c) of Public Law 97-35 (95 Stat. 745).

Appropriations for U.S. payments authorized in sec. 23 have been provided in the following amounts and Acts: fiscal year 1978—$49.5 million (Public Law 95-148); fiscal year 1979—$70.5 million (Public Law 95-481); fiscal year 1980—$0; fiscal year 1981—$3.5 million (Public Law 96-536); fiscal year 1982—$7.8 million (Public Law 97-121); fiscal year 1983—$20.4 million (Public Law 97-377).

[10] Sections 24 and 25 were added by sec. 201 of Public Law 96-259 (94 Stat. 430).

thorized to be appropriated, without fiscal year limitation, $378,250,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than $111,250,000 of such sum may be made available for the fiscal year 1982, and not more than $44,500,000 of such sum may be made available for the fiscal year 1983.[11]

(c) For the purpose of keeping to a minimum the cost to the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the Asian Development Fund authorized by this section by letter of credit in four annual installments; and

(2) shall take the steps necessary to obtain a certification from the Bank that any undisbursed balances resulting from draw-downs on such letter of credit will not exceed at any time the United States share of expected disbursement requirements for the following three-month period.

Sec. 25.[10] It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be permitted to retain membership in the Asian Development Bank and that the United States Executive Director of the Bank shall notify the Bank that a serious review of future United States participation, including any future payments to the Asian Development Fund, would ensue if Taiwan were expelled from the Bank.

Sec. 26.[12] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States $66,750,000 to the Asian Development Fund, a special fund of the Bank: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $66,750,000 for payment by the Secretary of the Treasury: *Provided, however,* That no funds may be made available for such contribution for the fiscal year 1982.[13]

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[11] The proviso clause was added by sec. 1352(b) of Public Law 97-35 (95 Stat. 744).

Appropriations for U.S. payments authorized in sec. 24 have been provided in the following amounts and acts: fiscal year 1980—$111.2 million (Public Law 96-123); fiscal year 1981—$111.2 million (Public Law 96-536); fiscal year 1982—$108.3 million (Public Law 97-121); fiscal year 1983—$44.5 million (Public Law 97-377).

[12] Sec. 26 was added by sec. 1352(a) of Public Law 97-35 (95 Stat. 744).

[13] Sec. 101(b)(1) of the Further Continuing Appropriations Act, 1983, (Public Law 97-377) provides $66.75 million during fiscal year 1983 for this authorization.

15. African Development Fund Act, as amended [1]

Partial text of Public Law 94-302 [H.R. 9721], 90 Stat. 591, approved May 31, 1976, as amended by Public Law 95-118 [H.R. 5262], 91 Stat. 1067 at 1069, approved October 3, 1977; Public Law 96-259 [S. 662], 94 Stat. 429 at 430, approved June 3, 1980; and by Public Law 96-465 [H.R. 6790], 94 Stat. 2071 at 2161, approved October 17, 1980

AN ACT To provide for increased participation by the United States in the Inter-American Development Bank, to provide for the entry of nonregional members and the Bahamas and Guyana in the Inter-American Development Bank, to provide for the participation of the United States in the African Development Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE II—AFRICAN DEVELOPMENT FUND

Sec. 201. This title may be cited as the "African Development Fund Act".

Sec. 202. The President is hereby authorized to accept participation for the United States in the African Development Fund (hereinafter referred to as the "Fund") provided for by the agreement establishing the Fund (hereinafter referred to as the "agreement") deposited in the archives of the United Nations.

Sec. 203. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor, and an Alternate Governor, of the Fund.

(b) The Governor, or in his absence the Alternate Governor, on the instructions of the President, shall cast the votes of the United States for the Director to represent the United States in the Fund. The Director representing the United States and his Alternate, if they are citizens of the United States, may, in the discretion of the President, receive such compensation, allowances, and other benefits not exceeding those authorized for a chief of mission, under the Foreign Service Act of 1980.[2]

Sec. 204. The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b),[3] shall apply with respect to the Fund to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund. Reports with respect to the Fund under paragraphs (5) and (6) of subsection 4 of said Act, as amended, shall be

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[1] 22 U.S.C. 290g, 290g-11.

[2] The references to the chief of mission and to the Foreign Service Act of 1980 were inserted by Public Law 96-465 (94 Stat. 2161), effective Feb. 15, 1981. These references formerly pertained to the Chief of Mission, class 2, and to the Foreign Service Act of 1946, respectively.

[3] For text, see page 368.

included in the first report made thereunder after the United States accepts participation in the Fund.

Sec. 205. Unless Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States:

(a) agree to an increase in the subscription of the United States to the Fund;

(b) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which would change the purpose of functions of the Fund; or

(c) make a loan or provide other financing to the Fund, except that funds for technical assistance may be provided to the Fund by a United States agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

Sec. 206. (a) There is hereby authorized to be appropriated without fiscal year limitation, as the United States subscription, $25,000,000 to be paid by the Secretary of the Treasury to the Fund in three annual installments of $9,000,000, $8,000,000, and $8,000,000.

(b) Any repayment or distribution of moneys from the Fund to the United States shall be covered into the Treasury as a miscellaneous receipt.

Sec. 207. Any Federal Reserve bank which is requested to do so by the President shall act as a depository for the Fund, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

Sec. 208. For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Fund in accordance with the agreement, the Fund shall be deemed to be an inhabitant of the Federal judicial district in which its principal office or agency appointed for the purpose of accepting service or notice of service is located, and any such action to which the Fund shall be party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in title 28, section 460, United States Code) shall have original jurisdiction of any such action. When the Fund is defendant in any action in a State court, it may, at any time before the trial thereof, remove such action into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

Sec. 209. The agreement, including without limitation articles 41 through 50, shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon the acceptance of participation by the United States in, and the entry into force of, the Fund. The President, at the time of deposit of the instrument of acceptance of participation of the United States in the Fund, shall also deposit a declaration that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Fund to its citizens or nationals and may deposit a declaration providing for reservations on other matters set forth in article 58.

Sec. 210. The President shall instruct the United States Governor of the Fund to cause the Executive Director representing the United States in the Fund to cast the votes of the United States against any loan or other utilization of the funds of the Fund for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes,[4] or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

Sec. 211.[5] (a) The United States Governor is hereby authorized to contribute on behalf of the United States $50,000,000 to the African Development Fund, which would represent an additional United States contribution to the first replenishment. The Secretary of the Treasury is directed to begin discussions with other donor nations to the African Development Fund for the purpose of setting amounts and of reviewing and possibly changing the voting structure within the Fund: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the African Development Fund provided for in this section there are authorized to be appropriated without fiscal year limitation $50,000,000 for payment by the Secretary of the Treasury.[6]

Sec. 212.[7] (a) The United States Governor of the Fund is authorized to contribute on behalf of the United States $125,000,000 to the Fund as the United States contribution to the second replenishment of the resources of the Fund, except that any commitment to

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[4] For text see vol. III, page 565.

[5] This section, which was added as sec. 212 by sec. 601 of Public Law 95-118 (91 Stat. 1069), was redesignated as sec. 211 by sec. 301(1) of Public Law 96-259 (94 Stat. 430). The original sec. 211, which directed the U.S. Governor of the Fund to vote against any loans or assistance to any country engaging in violations of human rights, was repealed by sec. 702 of Public Law 95-118 (91 Stat. 1070). For new references to the African Development Fund and human rights, see title VII of Public Law 95-118 (page 433).

[6] Appropriations for U.S. payment authorized in sec. 211 were provided in the following amounts and acts: fiscal year 1976—$5 million (Public Law 94-303); fiscal year 1977—$10 million (Public Law 94-441); fiscal year 1978—$10 million (Public Law 95-148); fiscal year 1979—$25 million (Public Law 95-481).

[7] Sec. 212 was added by sec. 301(1) of Public Law 96-259 (94 Stat. 430).

make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $125,000,000 for payment by the Secretary of the Treasury.[8]

(c) For the purpose of keeping to a minimum the cost of the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the African Development Fund authorized by this section by letter of credit in three annual installments; and

(2) shall take the steps necessary to obtain a certification from the Fund that any undisbursed balances resulting from drawdowns on such letter of credit will not exceed at any time the United States share of expected disbursement requirements for the following three-month period.

[8] Appropriations for U.S. payments authorized in sec. 212 were provided in the following amounts and acts: Fiscal year 1980—$25 million (Public Law 96-123); fiscal year 1981—$41.7 million (Public Law 96-536); fiscal year 1982—$58.3 million (Public Law 97-121).

16. African Development Bank Act[1]

Partial text of Public Law 97-35 [H.R. 3982], 95 Stat. 357 at 741, approved August 13, 1981

AN ACT To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

TITLE XIII—INTERNATIONAL AFFAIRS

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SUBTITLE B—INTERNATIONAL DEVELOPMENT BANKS

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PART 3—AFRICAN DEVELOPMENT BANK

SHORT TITLE

Sec. 1331. This part may be cited as the "African Development Bank Act".

ACCEPTANCE OF MEMBERSHIP

Sec. 1332. The President is hereby authorized to accept membership for the United States in the African Development Bank (hereinafter in this part referred to as the "Bank") provided for by the agreement establishing the Bank (hereinafter in this part referred to as the "agreement") deposited in the archives of the United Nations.

GOVERNOR AND ALTERNATE GOVERNOR

Sec. 1333. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor and an Alternate Governor of the Bank. The term of office for the Governor and the Alternate Governor shall be five years, subject at any time to termination of appointment or to reappointment. The Governor and Alternate Governor shall remain in office until a successor has been appointed.

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor, except for reasonable expenses to attend meetings of the Board of Governors.

(c) The Governor, or in the Governor's absence the Alternate Governor, on the instructions of the President, shall cast the votes of the United States for the Director to represent the United States in the Bank.

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[1] 22 U.S.C. 290i-290i-9.

DIRECTOR OR ALTERNATE DIRECTOR; ALLOWANCES

Sec. 1334. The Director or Alternate Director representing the United States, if citizens of the United States, may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received from the Bank and from the African Development Fund, may not exceed those authorized for a chief of mission under the Foreign Service Act of 1980.

APPLICABILITY OF BRETTON WOODS AGREEMENTS ACT

Sec. 1335. The provisions of section 4 of the Bretton Woods Agreements Act (22 U.S.C. 286b)[2] shall apply with respect to the Bank to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund. Reports with respect to the Bank under paragraphs (5) and (6) of section 4 of that Act shall be included in the first and subsequent reports made thereunder after the United States accepts membership in the Bank.

RESTRICTIONS

Sec. 1336. (a) Unless authorized by law, neither the President, nor any person or agency, shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Bank;

(2) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which changes the purpose or functions of the Bank; or

(3) make a loan or provide other financing to the Bank, except that funds for technical assistance may be provided to the Bank by a United States agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

FEDERAL RESERVE BANKS AS DEPOSITORIES

Sec. 1337. Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

SUBSCRIPTION OF STOCK

Sec. 1338. (a) The President is authorized to agree to subscribe on behalf of the United States to twenty-nine thousand eight hundred and twenty shares of the capital stock of the Bank: *Provided, however,* That the subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) There is authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury of the initial United States subscription to twenty-nine thousand eight hundred and twenty shares of the capital stock of the Bank, $359,733,570: *Provided, however,* That not more than $17,986,679 of

[2] For text, see page 368.

such sum may be made available for paid in subscriptions to the Bank for each of the fiscal years 1982, 1983, and 1984.[3]

(c) Any payment or distributions of moneys from the Bank to the United States shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION OF UNITED STATES COURTS

Sec. 1339. For the purposes of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agent appointed for the purpose of accepting service or notice of service is located, and any such action to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have original jurisdiction of any such action. When the Bank is defendant in any action in a State court, it may at any time before the trial thereof remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.

EFFECTIVENESS OF AGREEMENT

Sec. 1340. Paragraph 5 of article 49, articles 50 through 59, and the other provisions of the agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Bank. The President, at the time of deposit of the instrument of acceptance of membership by the United States in the Bank, shall also deposit a declaration as provided in article 64, paragraph 3, of the agreement that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to United States citizens or nationals.

SECURITIES ISSUED BY THE BANK

Sec. 1341. (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 9 of the agreement and any securities guaranteed by the Bank as to both principal and interest

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[3] Supplemental Appropriations and Rescission Act, 1981 (Public Law 97-12; 95 Stat. 35) provided:

"For payment to the African Development Bank by the Secretary of the Treasury, $17,987,000, to be available only upon the enactment of authorizing legislation, for the United States share of the initial subscription to paid-in capital stock, to remain available until expended: *Provided*, That no such payment may be made while the United States Executive Director to the African Development Bank is compensated by the Bank at a rate in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while the alternate United States Executive Director to the Bank is compensated by the Bank at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code."

to which the commitment in article 7, paragraph 4(a), of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

TECHNICAL AMENDMENTS

Sec. 1342. (a) The seventh sentence of paragraph 7 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking out "or" after "the Inter-American Development Bank" and inserting in lieu thereof a comma, and by inserting "or the African Development Bank" after "the Asian Development Bank".

(b) Section 701(a) of Public Law 95-118 (22 U.S.C. 262d(a)) is amended by striking out "and" after "the African Development Fund," and inserting "and the African Development Bank," after "the Asian Development Bank,".

(c) Section 801(a) of Public Law 95-118 (22 U.S.C. 262f(a)) is amended by striking out "and" after "the African Development Fund," and inserting "and the African Development Bank," after "the Asian Development Bank,".

(d) Section 51 of Public Law 91-599 (22 U.S.C. 276c-2) is amended by striking out "and" after "the Asian Development Bank," and inserting "and the African Development Bank," after "the African Development Fund,".

17. International Financial Institutions Act [1]

Partial text of Public Law 95-118 [H.R. 5262], 91 Stat. 1067, approved October 3, 1977, as amended by Public Law 96-259 [S. 662], 94 Stat. 429 at 431, approved June 3, 1980; Public Law 97-35 [H.R. 3982], 95 Stat. 357 at 743 and 745, approved August 13, 1981; and by Public Law 97-375 [H.R. 6005], 96 Stat. 1819 at 1826, approved December 21, 1982

NOTE.—Except for the provisions noted below, this Act consists of amendments to the Bretton Woods Agreements Act, International Finance Corporation Act, International Development Association Act, Asian Development Bank Act, African Development Fund Act, and the Inter-American Development Bank Act.

AN ACT To provide for increased participation by the United States in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Asian Development Bank and the Asian Development Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE [2]

Section 1. This Act may be cited as the International Financial Institutions Act

TITLE I—PURPOSE AND POLICY; DECLARATION OF CONGRESSIONAL INTENT IN RESPECT TO CONTINUED PARTICIPATION OF THE UNITED STATES GOVERNMENT IN INTERNATIONAL FINANCIAL INSTITUTIONS FOSTERING ECONOMIC DEVELOPMENT IN LESS DEVELOPED COUNTRIES

Sec. 101. (a) It is the sense of the Congress that—

(1) for humanitarian, economic, and political reasons, it is in the national interest of the United States to assist in fostering economic development in the less developed countries of this world;

(2) the development-oriented international financial institutions have proved themselves capable of playing a significant role in assisting economic development by providing to less developed countries access to capital and technical assistance and soliciting from them maximum self-help and mutual cooperation;

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[1] 22 U.S.C. 262c-262g-3.

[2] This section was added by sec. 1361(a) of Public Law 97-35 (95 Stat. 745).

(3) this has been achieved with minimal risk of financial loss to contributing countries;

(4) such institutions have proved to be an effective mechanism for sharing the burden among developed countries of stimulating economic development in the less developed world; and

(5) although continued United States participation in the international financial institutions is an important part of efforts by the United States to assist less developed countries, more of this burden should be shared by other developed countries. As a step in that direction, in future negotiations, the United States should work toward aggregate contributions to future replenishments to international financial institutions covered by this Act not to exceed 25 per centum.

(b) The Congress recognizes that economic development is a long-term process needing funding commitments to international financial institutions. It also notes that the availability of funds for the United States contribution to international financial institutions is subject to the appropriations process.

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TITLE VII—HUMAN RIGHTS

Sec. 701.[3] (a) The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, and the African Development Bank,[4] shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in—

(1) a consistent pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person; or

(2) provide refuge to individuals committing acts of international terrorism by hijacking aircraft.

(b) Further, the Secretary of the Treasury shall instruct each Executive Director of the above institutions to consider in carrying out his duties:

(1) specific actions by either the executive branch or the Congress as a whole on individual bilateral assistance programs because of human rights considerations;

(2) the extent to which the economic assistance provided by the above institutions directly benefit the needy people in the recipient country;

(3) whether the recipient country has detonated a nuclear device or is not a State Party to the Treaty on Non-Proliferation of Nuclear Weapons or both; and

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[3] 22 U.S.C. 262g.

[4] The reference to the African Development Bank was added by sec. 1342(b) of Public Law 97-35 (95 Stat. 743).

(4) in relation to assistance for the Socialist Republic of Vietnam, the People's Democratic Republic of Laos, and Democratic Kampuchea (Cambodia), the responsiveness of the governments of such countries in providing a more substantial accounting of Americans missing in action.

(c)(1)[5] The Secretaries of State and Treasury shall report annually to the Speaker of the House of Representatives and the President of the Senate on the progress toward achieving the goals of this title, excluding section 704[6] and including the listing required in subsection (d).

(2)[5] (A) The Secretary of the Treasury shall report quarterly on all loans considered by the Boards of Executive Directors of the institutions listed in subsection (a) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. Each such quarterly report shall include a list of all loans considered by the Boards of Executive Directors of such institutions and shall specify with respect to each such loan—

(i) the institution involved;

(ii) the date of final action;

(iii) the borrower;

(iv) the amount;

(v) the project or program;

(vi) the vote of the United States Government;

(vii) the reason for United States Government opposition, if any;

(viii) the final disposition of the loan; and

(ix) if the United States Government opposed the loan, whether the loan meets basic human needs.

(B) The information required to be reported under subparagraph (A) also shall be included in the annual report to the Congress of the National Advisory Council on International Monetary and Financial Policies.

(d) The United States Government, in connection with its voice and vote in the institutions listed in subsection (a), shall seek to channel assistance to projects which address basic human needs of the people of the recipient country. The annual report required under subsection (c) shall include a listing of categories of such assistance granted, with particular attention to categories that address basic human needs.

(e) In determining whether a country is in gross violation of internationally recognized human rights standards, as defined by the provisions of subsection (a), the United States Government shall give consideration to the extent of cooperation of such country in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations including, but not limited to, the International Committee of the Red Cross, Amnesty International, the International Commission of Jurists, and groups or persons acting under the au-

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[5] Paragraph designation "(1)" and a new par. (2) were added by sec. 501(a) of Public Law 96-259 (94 Stat. 431).

[6] Sec. 211 of Public Law 97-375 (96 Stat. 1826) added the language excluding sec. 704.

thority of the United Nations or the Organization of American States.

(f) The United States Executive Directors of the institutions listed in subsection (a) are authorized and instructed to oppose any loan, any extension of financial assistance, or any technical assistance to any country described in subsection (a) (1) or (2), unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country.

(g)[7] (1) The Secretary of the Treasury, in consultation with the Secretary of State, shall report quarterly to the chairmen and ranking minority members of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Subcommittee on International Development Institutions and Finance of such Committee, and the Committee on Foreign Relations of the Senate, in each instance in which the United States Executive Director of an institution listed in subsection (a) opposes any loan, financial assistance, or technical assistance for reasons regarding human rights. Each such report shall include—

(A) the reasons for such opposition;

(B) all policy considerations taken into account in reaching the decision to oppose such loan, financial assistance, or technical assistance;

(C) a description of the human rights conditions in the country involved;

(D) a record of how the United States Government voted on all other loans, financial assistance, and technical assistance to such country during the preceding two years; and

(E) information as to how the decision to oppose such loan, financial assistance, or technical assistance relates to overall United States Government policy on human rights in such country.

(2) The Secretary of the Treasury or his delegate shall consult frequently and in a timely manner with the chairmen and ranking minority members specified in paragraph (1) to inform them regarding any prospective changes in policy direction toward countries which have or recently have had poor human rights records.

Sec. 702. Section 28 of the Inter-American Development Bank Act, as amended (22 U.S.C. 283y), section 211 of the Act of May 31, 1976 (22 U.S.C. 290g–9), and section 15 of the International Development Association Act, as amended (22 U.S.C. 284m), are repealed.

Sec. 703.[8] (a) The Secretary of State and the Secretary of the Treasury shall initiate a wide consultation designed to develop a viable standard for the meeting of basic human needs and the protection of human rights and a mechanism for acting together to insure that the rewards of international economic cooperation are especially available to those who subscribe to such standards and are seen to be moving toward making them effective in their own system of governance.

(b) Not later than one year after the date of enactment of this Act, the Secretary of State and the Secretary of the Treasury shall

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[7] Subsec. (g) was added by sec. 501(b) of Public Law 96–259 (94 Stat. 432).
[8] 22 U.S.C. 262c note.

report to the President of the Senate and the Speaker of the House of Representatives on the progress made in carrying out this section.

Sec. 704. The President shall direct the United States Executive Directors of such international financial institutions to take all appropriate actions to keep the salaries and benefits of the employees of such institutions to levels comparable to salaries and benefits of employees of private business and the United States Government in comparable positions.

Sec. 705.[9] The President shall direct the United States Governor of the International Bank for Reconstruction and Development, the United States Governor of the International Finance Corporation, the United States Governor of the International Development Association, the United States Governor of the Inter-American Development Bank, the United States Governor of the Asian Development Bank, and the United States Governor of the African Development Fund, to consult with the other Governors of those institutions concerning adoption of an amendment to the Articles of Agreement of their respective institutions to establish human rights standards to be considered in connection with each application for assistance.

TITLE VIII—LIGHT CAPITAL TECHNOLOGY

Sec. 801. The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, and the African Development Bank,[10] shall promote the development and utilization of light capital technologies, otherwise known as intermediate, appropriate, or village technologies, by such international institutions as major facets of their development strategies, with major emphasis on the production and conservation of energy through light capital technologies.[11]

TITLE IX—HUMAN NUTRITION IN DEVELOPING COUNTRIES

Sec. 901. The Congress declares it to be the policy of the United States, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Fund, and the Asian Development Bank, to combat hunger and malnutrition and to encourage economic development in the developing countries, with emphasis on assistance to those countries that are determined to improve their own agricultural production, by seeking to channel assistance for agriculturally related development to projects that would aid in fulfilling domestic food and nutrition needs and in alleviating hunger and malnutrition in the recipient country. The United

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[9] 22 U.S.C. 262d note. Sec. 705 was added by sec. 501(c) of Public Law 96-259 (94 Stat. 432).

[10] The reference to the African Development Bank was added by sec. 1342(c) of Public Law 97-35 (95 Stat. 743).

[11] Subsec. (b), which previously appeared at this point and had required an annual report on the goals expressed in this title, was deleted by sec. 1371(b) of Public Law 97-35 (95 Stat. 746).

States representatives to the institutions named in this section shall oppose any loan or other financial assistance for establishing or expanding production for export of palm oil, sugar, or citrus crops if such loan or assistance will cause injury to United States producers of the same, similar, or competing agricultural commodity.[11]

TITLE X—EFFECTIVE DATE

Sec. 1001.[12] This Act shall take effect on the date of its enactment, except that no funds authorized to be appropriated by any amendment contained in title II, III, IV, V, or VI may be available for use or obligation prior to October 1, 1977.

TITLE XI—TARGETING ASSISTANCE TO THE NEEDY[13]

Sec. 1101. (a) The Congress finds that there is a need for concerted international efforts to deal with the problems of malnutrition, low life expectancy, childhood disease, underemployment, and low productivity in developing countries.

(b) The Congress notes with approval that the Inter-American Development Bank, under the terms of its Fifth Replenishment, has adopted the target that 50 percent of its lending benefit the poorest groups and has developed a usable methodology for determining the proportion of its lending which benefits such groups.

Sec. 1102. (a) The Secretary of the Treasury shall consult with representatives of other member countries of the International Bank for Reconstruction and Development, the International Development Association, the Asian Development Bank, the African Development Fund, and the African Development Bank (if the United States becomes a member of that Bank), for the purpose of establishing guidelines within each of those institutions which specify that, in a manner consistent with the purposes and charters of those institutions, a specified proportion of the annual lending by each institution shall be designed to benefit needy people, primarily by financing sound, efficient, productive, self-sustaining projects designed to benefit needy people in developing countries, thus helping poor people improve their conditions of life.

(b) The Congress finds that projects to construct basic infrastructure, to expand productive capacity (including private enterprise), and to address social problems can all meet the objectives of this section if they are designed and implemented properly. For the purposes of this title, "needy people" means those people living in "absolute" or "relative" poverty as determined under the standards employed by the International Bank for Reconstruction and Development and the International Development Association.

Sec. 1103. The Secretary of the Treasury shall, not later than May 1 of 1982, 1983, and 1984, report to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate on the progress being made toward achieving the goals of section 1102, and shall include in each such report, for each of the institutions referred to in sections 1101 and 1102, as

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[12] 22 U.S.C. 282r note.

[13] Titles XI and XII were added by sec. 1361(b) of Public Law 97-35 (95 Stat. 745).

accurate an estimate as is practicable of the proportion of the lending by that institution which benefits needy people in its borrower countries.

TITLE XII—CONGRESSIONAL CONSULTATIONS [13]

Sec. 1201. The Secretary of the Treasury or his designee shall consult with the Chairman and the Ranking Minority Member of—

(1) the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Appropriations of the House of Representatives, and the appropriate subcommittee of each such committee, and

(2) the Committee on Foreign Relations of the Senate, the Committee on Appropriations of the Senate, and the appropriate subcommittee of each such committee,

for the purpose of discussing the position of the executive branch and the views of the Congress with respect to any international negotiations being held to consider future replenishments or capital expansions of any multilateral development bank which may involve an increased contribution or subscription by the United States. Such consultation shall be made (A) not later than 30 days before the initiation of such international negotiations, (B) during the period in which such negotiations are being held, in a frequent and timely manner, and (C) before a session of such negotiations is held at which the United States representatives may agree to such a replenishment or capital expansion.

18. Providing for Increased Participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund

Public Law 96–259 [S. 662], 94 Stat. 429, approved June 3, 1980

NOTE.—Except for the provisions included below, this Act consisted of amendments to the Inter-American Development Bank Act, the Asian Development Bank Act, the African Development Fund Act, and the Act of October 3, 1977. These amendments have been incorporated at the appropriate places in the text.

AN ACT To provide for increased participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—INTER-AMERICAN DEVELOPMENT BANK

* * * * * * *

Sec. 102.[1] The President shall evaluate a proposal for joint action by the countries of the Western Hemisphere and other countries which participate in the Inter-American Development Bank to increase exploration for and exploitation of energy and mineral resources of the Western Hemisphere through multilateral incentives, administered by the Inter-American Development Bank, to private investment in such resources. The President shall report his findings to the Congress not later than September 30, 1980, together with such recommendations as he considers appropriate.

TITLE II—ASIAN DEVELOPMENT BANK

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TITLE III—AFRICAN DEVELOPMENT FUND

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TITLE IV—EXPORT OPPORTUNITY ENHANCEMENT

Sec. 401.[2] The Secretary of the Treasury shall instruct the United States Executive Directors of the Inter-American Develop-

[1] 22 U.S.C. 283 note.
[2] 22 U.S.C. 262i.

ment Bank, the Asian Development Bank, and the African Development Fund to take all possible steps to assure that information relative to potential procurement opportunities for United States firms is expeditiously communicated to the Secretary of the Treasury, the Secretary of State, and the Secretary of Commerce. Such information shall be disseminated as broadly as possible to both large and small business.

TITLE V—HUMAN RIGHTS REPORTING

* * * * * * *

TITLE VI—USE OF RENEWABLE RESOURCES FOR ENERGY PRODUCTION

Sec. 601.[3] The Congress finds that—

(1) without an adequate supply of energy at affordable prices the world's poor will continue to be deprived of jobs, food, water, shelter, and clothing, and poor countries will continue to be economically and politically unstable;

(2) dependence on increasingly expensive fossil fuel resources consumes too much of the capital available to poor countries with the result that funds are not available to meet the basic needs of poor people;

(3) in many developing countries the cost of large central generators and long distance electrical distribution makes it unlikely that rural energy by means of a national grid will contribute to meeting the needs of poor people;

(4) only one of eight rural inhabitants lives in an area which has access to electricity and even fewer rural inhabitants actually have or can afford electricity;

(5) wood, animal and agricultural waste, and other "noncommercial" fuels still supply about half the total energy in developing countries and all but a seventh in rural sectors;

(6) growing dependence of the world's poor on wood for heating and cooking has forced the overcutting of forests and as a consequence erosion and loss of available agricultural land; and

(7) recent initiatives by the international financial institution to develop and utilize decentralized solar, hydro, biomass, geothermal, and wind energy should be significantly expanded to make renewable energy resources increasingly available to the world's poor on a wide scale.

Sec. 602.[4] (a) The United States Government, in connection with its voice and vote in the Inter-American Development Bank, the African Development Fund, and the Asian Development Bank, shall encourage such institutions—

(1) to promote the decentralized production of renewable energy;

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[3] 22 U.S.C. 262j note.
[4] 22 U.S.C. 262j.

(2) to identify renewable resources to produce energy in rural development projects and determine the feasibility of substituting them for systems using fossil fuel;

(3) to train personnel in developing technologies for getting energy from renewable resources;

(4) to support research into the use of renewable resources, including hydropower, biomass, solar photovoltaic, and solar thermal;

(5) to support an information network to make available to policymakers the full range of energy choices;

(6) to broaden their energy planning, analyses, and assessments to include consideration of the supply of, demand for, and possible uses of renewable resources; and

(7) to coordinate with the Agency for International Development and other aid organizations in supporting effective rural energy programs.

(b) For purposes of this section, the term "renewable resource" means any energy resource which—

(1) meets the needs of rural communities;

(2) saves capital without wasting labor;

(3) is modest in scale and simple to install and maintain and which can be managed by local individuals;

(4) is acceptable and affordable; and

(5) does not damage the environment.

(c) The Secretary of the Treasury, in consultation with the Director of the United States International Development Cooperation Agency, shall report to the Congress not later than six months after the date of enactment of this Act and annually thereafter on the progress toward achieving the goals set forth in this title.

19. Convention on the Settlement of Investment Disputes Act of 1966

Public Law 89-532 [S. 3498], 80 Stat. 344, approved August 11, 1966

AN ACT To facilitate the carrying out of the obligations of the United States under the Convention of the Settlement of Investment Disputes Between States and Nationals of Other States, signed on August 27, 1965, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Convention on the Settlement of Investment Disputes Act of 1966".

Sec. 2.[1] The President may make such appointments of representatives and panel members as may be provided for under the convention.

Sec. 3.[2] (a) An award of an arbitral tribunal rendered pursuant to chapter IV of the convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the convention.

(b) The district courts of the United States (including the courts enumerated in title 28, United States Code, section 460) shall have exclusive jurisdiction over actions and proceedings under paragraph (a) of this section, regardless of the amount in controversy.

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[1] 22 U.S.C. 1650.
[2] 22 U.S.C. 1650a.

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1. Atomic Energy Act and Related Materials

a. Atomic Energy Act of 1954, as amended

Partial text of Public Law 83-703 [H.R. 9757], 68 Stat. 919, approved August, 30, 1954 [1]

AN ACT To amend the Atomic Energy Act of 1946, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Atomic Energy Act of 1946, as amended, is amended to read as follows:

"ATOMIC ENERGY ACT OF 1954

NOTE.—The Energy Reorganization Act of 1974 (Public Law 93-438, 88 Stat. 1233, approved October 11, 1974; 42 U.S.C. 5801-5891) repealed Sections 21 and 22 abolishing the Atomic Energy Commission created thereunder and vesting its licensing and related regulatory authority of facilities under chapters 6, 7, 8, and 10 in a new Nuclear Regulatory Commission and transferring all its other functions to a new Energy Research and Development Administration. All functions of the Energy Research and Development Administration were subsequently transferred to the Department of Energy which was established, effective October 1, 1977, pursuant to the Department of Energy Organization Act (91 Stat. 569) and Executive Order 12009 of September 13, 1977.

[1] 42 U.S.C. 2011-2281. Amended by Public Law 84-337 (69 Stat. 630); Public Law 84-722 (70 Stat. 553); Public Law 84-1006 (70 Stat. 1069); Public Law 85-14 (71 Stat. 11); Public Law 85-79 (71 Stat. 274); Public Law 85-162 (71 Stat. 410); Public Law 85-177 (71 Stat. 455); Public Law 85-256 (71 Stat. 576); Public Law 85-287 (71 Stat. 612); Public Law 85-479 (72 Stat. 276); Public Law 85-507 (72 Stat. 337); Public Law 85-602 (72 Stat. 525); Public Law 85-681 (72 Stat. 632); Public Law 85-744 (72 Stat. 837); Public Law 86-43 (73 Stat. 73); Public Law 86-50 (73 Stat. 87); Public Law 86-300 (73 Stat. 574); Public Law 86-373 (73 Stat. 688); Public Law 87-206 (75 Stat. 476); Public Law 87-615 (76 Stat. 409); Public Law 87-793 (76 Stat. 864); Public Law 88-72 (77 Stat. 88); Public Law 88-294 (78 Stat. 172); Public Law 88-394 (78 Stat. 376); Public Law 88-426 (78 Stat. 423); Public Law 88-448 (78 Stat. 490); Public Law 88-489 (78 Stat. 602); Public Law 89-135 (79 Stat. 551); Public Law 89-210 (79 Stat. 855); Public Law 89-645 (80 Stat. 891); Public Law 90-190 (81 Stat. 577); Public Law 91-161 (83 Stat. 444); Public Law 91-452 (84 Stat. 930); Public Law 91-560 (84 Stat. 1472); Public Law 92-84 (85 Stat. 307); Public Law 92-307 (86 Stat. 191); Public Law 92-314 (86 Stat. 227); Public Law 93-377 (88 Stat. 472); Public Law 93-438 (88 Stat. 1233); Public Law 93-485 (88 Stat. 1460); Public Law 93-514 (88 Stat. 1611); Public Law 94-197 [H.R. 8631], 89 Stat. 1111, approved Dec. 31, 1975; Public Law 95-110 [S. 1153], 91 Stat. 884, approved Sept. 20, 1977; Public Law 95-242 (92 Stat. 120); Public Law 95-601 (92 Stat. 2947 at 2950); Public Law 95-604 (92 Stat. 3021); Public Law 96-106 (93 Stat. 796 at 800); Public Law 96-295 (94 Stat. 780 at 786); and by Public Law 97-164 (96 Stat. 25 at 48 and 49).

"CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

"**Section 1. Declaration.**—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

"a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

"b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

"**Sec. 2. Findings.**[2]—The Congress of the United States hereby makes the following findings concerning the development, use, and control of atomic energy:

"a. The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

"c.[3] The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

"d. The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

"e. Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

"f. The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.

"g. Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

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[2] Sec. 20 of Public Law 88-489 (78 Stat. 602) (1964), the Private Ownership of Special Nuclear Materials Act, reads as follows:

"Nothing in this Act shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, to regulate source, byproduct, and special nuclear material and production and utilization facilities, or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives."

[3] Public Law 88-489 (78 Stat. 602) (1964), sec. 1, deleted subsec. 2b. Subsec. 2b. read as follows:

"b. In permitting the property of the United States to be used by others, such use must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."

"i.[4] In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.[5]

"**Sec. 3. Purpose.**—It is the purpose of this Act to effectuate the policies set forth above by providing for—

"a. a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

"b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

"c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contributions to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons.[6]

"d. a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

"e. a program of international cooperation to promote the common defense and security and to make peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

"f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

"CHAPTER 2. DEFINITIONS

"**Sec. 11. Definitions.**—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

"a. The term 'agency of the United States' means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee,

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[4] Public Law 88-489 (78 Stat. 602), sec. 2, deleted subsec. 2h. Subsec. 2h. read as follows:
"h. It is essential to the common defense and security that title to all special nuclear material be in the United States while such special material is within the United States."

[5] Public Law 85-256 (71 Stat. 576) (1957), sec. 1, added subsec. i.

[6] Public Law 88-489 (78 Stat. 602) (1964), sec. 3, amended subsec c. It formerly read:
"c. A program for Government control of the possession, use, and production of atomic energy and special nuclear material so directed as to make the maximum contribution to the common defense and security and the national welfare;"

commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

"b. The term 'agreement for cooperation' means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91 c., 103, 104, or 144, and made pursuant to section 123.[7]

"c. The term 'atomic energy' means all forms of energy released in the course of nuclear fission or nuclear transformation.

"d. The term 'atomic weapon' means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

"e.[8] The term 'byproduct material' means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

"f. The term 'Commission' means the Atomic Energy Commission.

"g. The term 'common defense and security' means the common defense and security of the United States.

"h. The term 'defense information' means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

"i. The term 'design' means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

"j.[9] The term 'extraordinary nuclear occurrence' means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Commission that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Commission shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, 'offsite' means away from 'the location' or 'the con-

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[7] Public Law 87-206 (75 Stat. 475) (1961, sec. 2, amended subsec. b by adding the reference to sec. 91c.

[8] Subsec. e was amended and restated by sec. 201 of Public Law 95-604 (92 Stat. 3033). The former definition of "byproduct material" included only the text found in phrase (1) of the current subsec. e.

[9] Public Law 89-645 (80 Stat. 891) (1966), sec. 1, added subsecs. j and m.

tract location' as defined in the applicable Commission indemnity agreement, entered into pursuant to section 170.

"k.[10] The term 'financial protection' means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

"l. The term 'Government agency' means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

"m.[9] The term 'indemnitor' means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Commission with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

"n. The term 'international arrangement' means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

"o. The term 'Joint Committee' means the Joint Committee on Atomic Energy.

"p. The term 'licensed activity' means an activity licensed pursuant to this Act and covered by the provisions of section 170. a.[11]

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence,[12] within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in subsection 170 l., it shall include any such occurrence outside of the United States: *And provided further,* That as the term is used in section 170 d. it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material by, and used by or under contract with, the United States: *And provided further,* That as the term is used in subsection 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from

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[10] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. k.
[11] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. p.
[12] Public Law 89-645 (80 Stat. 891) (1966), sec. 1, amended this subsection by inserting the phrase ", including an extraordinary nuclear occurrence.".

one person licensed by the Commission to another person licensed by the Commission.[13]

"r. The term 'operator' means any individual who manipulates the controls of a utilization or production facility.

"s. The term 'person' means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

"t. The term 'person indemnified' means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in subsection 170 c., and with respect to any other nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship *Savannah*, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d. has been extended or under any subcontract, purchase order or other agreement, of any tier, under any such contract or project.[14]

"u. The term 'produce', when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

"v. The term 'production facility' means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

"w. The term 'public liability' means any legal liability arising out of or resulting from a nuclear incident, except: (i) claims under State or Federal workmen's compensation acts of employees of per-

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[13] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. q. Prior to amendment by Public Law 89-645 (see footnote 9, page 448) the subsection had been amended by Public Law 87-615 (76 Stat. 409) (1962), sec. 4. Before amendment it read: "o. The term 'nuclear incident' means any occurrence within the United States causing bodily injury, sickness, disease, or death, or loss of or damage to property, or for loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in subsection 170 l., it shall mean any such occurrence outside of the United States rather than within the United States." Public Law 94-197 (89 Stat. 1111) (1975), sec. 1, substituted "source, special nuclear, or byproduct material" for "a facility or device" in the second proviso and added the third proviso.

[14] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. t. Public Law 87-615 (76 Stat. 409) (1962). Sec. 5, amended the subsection. Before amendment, it read: "r. The term 'person indemnified' means the person with whom an indemnity agreement is executed and any other person who may be liable for public liability." Public Law 94-197 (89 Stat. 1111) (1975), sec. 1, further amended the subsection.

sons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections 170 a., c., and k., claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity which the nuclear incident occurs. 'Public liability' also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.[15]

"x. The term 'research and development' means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

"y. The term 'Restricted Data' means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

"z. The term 'source material' means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

"aa. The term 'special nuclear material' means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

"bb. The term 'United States' when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.[16]

"cc. The term 'utilization facility' means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and

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[15] Public Law 85-256 (71 Stat. 576) (1957), sec. 3, added subsec. w. Public Law 87-206 (75 Stat. 475) (1961), sec. 3, amended the subsec. Before amendment, it read:

"u. The term 'public liability' means any legal liability arising out or resulting from a nuclear incident, except claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs, and except for claims arising out of an act of war. 'Public liability' also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs."

[16] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 1, amended this definition. Before amendment it read:

"u. The term 'United States', when used in a geographical sense, includes all Territories and possessions of the United States, and the Canal Zone."

security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

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"CHAPTER 6. SPECIAL NUCLEAR MATERIAL

"Sec. 51. Special Nuclear Material.—The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Joint Committee, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

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"Sec. 54.[17] Foreign Distribution of Special Nuclear Material.—a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however,* That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium-235 five hundred grams of uranium-233, and three kilograms of plutonium,

[17] Sec. 54 was as amended and restated by sec. 2 of Public Law 93-377 (88 Stat. 472).

together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however,* That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Joint Committee and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further,* That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: *And provided further,* That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

"b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57 d., exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges

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applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

"c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

"d.[18] The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

"(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

"(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

"e.[19] The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2)(E) shall be subject to the requirements of section 131.

"**Sec. 55.**[20] **Acquisition.**—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 or any guaranteed purchase prices established pursuant to section 56, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section: *Providing,* That the authority in this section to commit United States funds for any activities pursuant to any subsequent

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[18] Subsec. d. was added by sec. 301(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 125).

[19] Subsec. e. was added by sec. 303(b)(1) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 131).

[20] Public Law 88-489 (78 Stat. 602) (1964), sec. 10, amended sec. 55 by substituting a new sec. 55. Before amendment sec. 55 read as follows:

"SEC. 55. ACQUISITION.—The Commission is authorized to purchase or otherwise acquire any special nuclear material or any interest therein outside the United States without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes."

arrangement under section 131 a. (2)(E) shall be subject to the requirements of section 131.[21]

"Sec. 56. Guaranteed Purchase Prices.—The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 103 or section 104 and delivered to the Commission within the period of the guarantee.[22] Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided,* That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 53.[23]

"Sec. 57.[24] Prohibition.—

"a. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

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[21] The proviso clause was added by sec. 303(b)(2) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 131).

[22] Public Law 91-500 (84 Stat. 1472) (1970), sec. 2, added "section 103 or" to this sentence.

[23] Public Law 88-489 (78 Stat. 602) (1964), sec. 11 amended sec. 56 by substituting a new sec. 56. Before amendment sec. 56 read as follows:

"Sec. 56. Fair Price.—In determining the fair price to be paid by the Commission pursuant to section 52 for the production of any special nuclear material, the Commission shall take into consideration the value of the special nuclear material for its intended use by the United States and may give such weight to the actual cost of producing that material as the Commission finds to be equitable. The fair price, as may be determined by the Commission, shall apply to all licensed producers of the same material: *Provided, however,* That the Commission may establish guaranteed fair prices for all special nuclear material delivered to the Commission for such period of time as it may deem necessary but not to exceed seven years."

[24] Public Law 88-489 (78 Stat. 602) (1964), sec. 12 amended sec. 57 substituting a new sec. 57. Before amendment sec. 57 read as follows:

"Sec. 57. Prohibition.—

"a. It shall be unlawful for any person to—

"(1) possess or transfer any special nuclear material which is the property of the United States except as authorized by the Commission pursuant to subsec. 53 a.;

"(2) transfer or receive any special nuclear material in interstate commerce except as authorized by the Commission pursuant to subsection 25 a., or export from or import into the United States any special nuclear material; and

"(3) directly or indirectly engage in the production of any special nuclear material outside of the United States except (A) under an agreement for cooperation made pursuant to section 123, or (B) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States.

"b. The Commission shall not distribute any special nuclear material—

"(1) to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

"(2) to any person within the United States, if the Commission finds that the distribution of such special nuclear material to such person would be inimical to the common defense and security."

"b.[25] It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided,* That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection.[26] Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978 shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further,* That the export of component parts as defined in subsection 11 v. (2) or 11 cc. (2) shall

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[25] Subsec. b. was amended and restated by sec. 302 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 126). It formerly read as follows:

"b. It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) under an agreement for cooperation made pursuant to sec. 123, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States."

[26] These procedures were issued on June 1, 1978. For text, see vol. III, page 645.

be governed by sections 109 and 126 of this Act: *Provided further,* That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95–91), the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54 d., section 64, or section 111 b.

"c. The Commission shall not—

"(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

"(2) distribute any special nuclear material or issue a license pursuant to section 53 to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

"d.[27] The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

"**Sec. 58.**[28] **Review.**—Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 53, the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Joint Committee and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however,* That the Joint Committee, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five day period.

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[27] Subsec. d. was added by sec. 3 of Public Law 93–377 (88 Stat. 472 at 475).

[28] Public Law 88–489 (78 Stat. 602) (1964), sec. 13, amended sec. 58 by substituting a new sec. 58. Before amendment sec. 58 read as follows:

"SEC. 58. REVIEW.—Before the Commission establishes any fair price or guaranteed fair price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed or distributed under section 53 the proposed fair price, guaranteed fair price period, or criteria for the waiver of such charge shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however,* That the Joint Committee, after having received the proposed fair price, guaranteed fair price period, or criteria for the waiver of such charge, may by resolution waive the conditions of or all or any portion of such forty-five day period."

"CHAPTER 7. SOURCE MATERIAL

"**Sec. 61. Source Material.**—The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Joint Committee, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

"**Sec. 62. License for Transfers Required.**—Unless authorized by a general or specific license issued by the Commission, which the Commission is hereby authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

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"**Sec. 64. Foreign Distribution of Source Material.**—The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.[29]

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"**Sec. 69. Prohibition.**—The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

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[29] This sentence was added by sec. 301(b) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 125).

"CHAPTER 8. BYPRODUCT MATERIAL

"**Sec. 81. Domestic Distribution.**—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84.[30] The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to licensees[31] with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. Licensees of the Commission may distribute byproduct material only to applicants therefor who are licensed by the Commission to receive such byproduct material. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

"**Sec. 82. Foreign Distribution of Byproduct Material.**—

"a. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 123.

"b. The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such materials as would be charged for the material if it were distributed within the United States: *Provided, however,* That the Commission shall not distribute any such material to any person under this sec-

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[30] The reference to sec. 84 was added by sec. 205(b) of Public Law 95-604 (92 Stat. 3039).

[31] Sec. 4 of Public Law 93-377 (88 Stat. 472 at 475) deleted the word "licensees" and substituted "qualified applicants".

tion if, in its opinion, such distribution would be inimical to the common defense and security: *And provided further,* That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

"c. The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

"Sec. 83.[32] Ownership and Custody of Certain Byproduct Material and Disposal Sites.—

"a. Any license issued or renewed after the effective date of this section under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11 e. (2), shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

"(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

"(2) ownership of any byproduct material, as defined in section 11 e. (2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section [32] and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

"b. (1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11 e. (2), pursuant to such license shall be transferred to—

"(i) the United States, or

"(ii) the State in which such land is located, at the option of such State,

unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 81 of

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[32] Sec. 83 was added by sec. 202(a) of Public Law 95-604 (92 Stat. 3033). However, sec. 202(b) of that act stated that sec. 83 would not be effective until Nov. 8, 1981. The last sentence of subsec. a. was amended and restated by sec. 20(c) of Public Law 96-106.

this Act in such manner as will protect the public health, safety, and the environment.

"(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

"(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

"(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

"(4) In the case of any such license under section 62, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interest therein (described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

"(5) The Commission may, pursuant to a license, or by rule or order require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.

"(6) The transfer of title to land or byproduct materials, as defined in section 11 e. (2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

"(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

"(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11 e. (2), the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

"c. Upon termination of any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

"Sec. 84.[33] Authorities of Commission Respecting Certain Byproduct Material.—

"a. The Commission shall insure that the management of any byproduct material, as defined in section 11 e. (2), is carried out in such manner as—

"(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material,

"(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

"(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

"b. In carrying out its authority under this section, the Commission is authorized to—

"(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or

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[33] Sec. 84 was added by sec. 205(a) of Public Law 95-604 (92 Stat. 3039).

property, and in connection with the disposal or storage of such byproduct material; and

"(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provision of this Act.

"CHAPTER 9. MILITARY APPLICATION OF ATOMIC ENERGY

"Sec. 91. Authority.—

"a. The Commission is authorized to—

"(1) conduct experiments and do research and development work in the military application of atomic energy; and

"(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of he United States has been obtained, which consent and direction shall be obtained at least once each year.

"b. The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided, however,* That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

"c.[34] The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation and, notwithstanding the provisions of section 57, 62, or 81, to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President—

"(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;

"(2) utilization facilities for military applications; and

"(3) "source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and

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[34] Public Law 85-479 (72 Stat. 276) (1958), sec. 1, added subsec. e.

"(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided, however,* That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further,* That such nation has made substantial progress in the development of atomic weapons,

whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123: *And provided further,* That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation.

"Sec. 92.[35] Prohibition.—It shall be unlawful, except as provided in section 91, for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101.

"CHAPTER 10. ATOMIC ENERGY LICENSES

"Sec. 101. License Required.—It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use,[36] import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104.

"Sec. 102.[37] Utilization and Production Facilities for Industrial or Commercial Purposes.—

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[35] Public Law 85-479 (72 Stat. 276), sec. 2, amended sec. 92 by substituting a new sec. 92. Before amendment sec. 92 read as follows:

"Sec. 92. Prohibition.—It shall be unlawful for any person to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon, except as may be authorized by the Commission pursuant to the provisions of section 91. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101."

[36] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 11, added the word "use".

[37] Public Law 91-560 (84 Stat. 1472) (1970), sec. 3, amended sec. 102. Prior to amendment it read as follows:

"SEC. 102. FINDING OF PRACTICAL VALUE.—Whenever the Commission has made a finding in writing that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes, the Commission may thereafter issue licenses for such type of facility pursuant to section 103."

"a. Except as provided in subsections b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

"b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104 b. prior to enactment into law of this subsection, shall be issued under subsection 104 b.

"c. Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104 b.

"Sec. 103. Commercial Licenses.—

"a. The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use,[38] import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes.[39] Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

"b. The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

"c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

"d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged

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[38] Public Law 84-1006 (70 Stat. 1069), sec. 12, added the word "use.".

[39] Public Law 91-650 (84 Stat. 1472) (1970), sec. 4, amended the first sentence of sec. 103 a. Before amendment it read as follows:

"Subsequent to a finding by the Commission as required in section 102, the Commission may issue licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, such type of utilization or production facility."

pursuant to section 123, or except under the provisions of section 109. No license may be issued to an alien or any[40] corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

"f.[41] Each license issued for a utilization facility under this section or section 104 b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104 b. which is in effect on the date of enactment of this subsection to include the provision required under this subsection.

"**Sec. 104. Medical Therapy and Research and Development.**—

"a. The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect the health and safety of the public.

"b.[42] As provided for in subsection 102 b. or 102 c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act.

"c. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types speci-

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[40] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 13, added the words "an alien or any" between the words "to" and "any" in the second sentence of subsec. 103 d.

[41] Subsec. f. was added by sec. 201(a) of Public Law 96-295 (94 Stat. 786).

[42] Public Law 91-560 (84 Stat. 1472) (1970), sec. 5, amended subsection 104 b. Before amendment it read as follows:

"b. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will be compatible with the regulations and terms of license which would apply in the event that a commercial license were later to be issued pursuant to section 103 for that type of facility. In issuing such licenses, priority shall be given to those activities which will, in the opinion of the Commission, lead to major advances in the application of atomic energy for industrial or commercial purposes."

fied in section 31 and which are not facilities of the type specified in subsection 104 b. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

"d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 or except under the provisions of section 109. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

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"**Sec. 109.**[43] **Component and Other Parts of Facilities.**—

"a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11 v. (2) or 11 cc. (2) the Commission may issue general licenses for domestic activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

"b. After consulting with the Secretaries of State, Energy, and Commerce and the Director, the Commission is authorized and directed to determine which component parts as defined in subsection 11 v. (2) or 11 cc. (2) and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b. (2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of

[43] Sec. 109 was amended and restated by sec. 309(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 141). Sec. 309(b) of that act also instructed the Commission to publish regulations to implement the provisions of subsecs. b and c of sec. 109. Sec. 309(d) of that same act also stated that the amendments to sec. 109 would not affect the approval of exports contracted for prior to Nov. 1, 1977, which are made by Mar. 10, 1979.

the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided,* That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act.

"c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126 a., that the export would be inimical to the common defense and security of the United States.

"**Sec. 111.**[44] a. The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to sections 54, 64, and 82 of this Act, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided,* That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act.

"b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act or their equivalent and any application criteria in subsection 128 are met, and that the proposed distribution would not be inimical to the common defense and security.

"CHAPTER. 11. INTERNATIONAL ACTIVITIES

"**Sec. 121. Effect of International Arrangements.**—Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act shall be deemed to be of no force or effect.

"**Sec. 122. Policies Contained in International Arrangements.**—In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

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"**Sec. 123.**[45] **Cooperation With Other Nations.**—

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[44] Sec. 111 was added by sec. 301(c) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 125).

[45] Sec. 123, as previously amended by Public Law 85-479 (72 Stat. 276). Public Law 85-681 (72 Stat. 632), and Public Law 88-489 (78 Stat. 602), was further amended and restated by sec. 401 of

"No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

"a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

"(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

"(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

"(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

"(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

"(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to subsection 91 c., 144 b. or 144

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the Nuclear Non-Proliferation Act of 1978 (92 Stat. 142). Sec. 405(a) of the 1978 Act also stated that these amendments to sec. 123 would not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to Mar. 10, 1978. Sec. 407 also of the 1978 act specified that for any agreement entered into pursuant to sec. 123, the President shall strive to include in such agreement cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

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c., any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

"(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

"(7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

"(8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., a guaranty by the cooperating party that no plutonium, no uranium 223, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

"(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b. or 144 c., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., or 144 c.) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsec-

tion 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ('the Director'); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c. or 144 b. which are to be implemented by the Department of Defense, by the Secretary of Defense;

"b. the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

"c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

"d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., or 144 c., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating

in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection 123 a., has been submitted to the Congress. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

"Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c.) to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

"If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.".

"Sec. 124. International Atomic Pool.—The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 54 a., 57, 64, 82, 103, 104, or 114 a.: *Provided, however,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

"Sec. 125.[46] Cooperation With Berlin.—The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those areas over which the Berlin Senate exercises jurisdiction (the United States, British, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections 54 a, 57, 64, 82, 103, or 104: *Provided,* That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants.

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[46] Sec. 125 was added by Public Law 85-14 (71 Stat. 11).

"Sec. 126.[47] Export Licensing Procedures.—

"a. No license may be issued by the Nuclear Regulatory Commission (the 'Commission') for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under section 54, 64, or 82, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until—

"(1) The Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the preparation of the executive branch judgment on export applications under this section.[48] Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time

[47] Sec. 126 was added by sec. 304(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 131).
[48] Such procedures were issued June 1, 1978. For text, see Vol. III, page 635.

for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provision of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

"(A) whether issuing the license or granting the exemption will materially advance the non-proliferation policy of the United States by encouraging the recipient nation to adhere to the Treaty, or to participate in the undertakings contemplated by section 403 or 404(a) of the Nuclear Non-Proliferation Act of 1978;

"(B) whether failure to issue the license or grant the exemption would otherwise be seriously prejudicial to the non-proliferation objectives of the United States; and

"(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 127 of this Act will be applied by another nuclear supplier nation or group of nations to the proposed United States export, and whether in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States.

The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be; and

"(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 127 of this Act or their equivalent, and any other applicable statutory requirements, are met: *Provided,* That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 for a period of thirty days after enactment of this section, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation Act of 1978; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section: *Provided further,* That if, upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act,

but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on International Relations of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act: *And additionally provided,* That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no materially changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no materially changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such findings in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further,* That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

"b. (1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

"(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously preju-

dicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order:[49] *Provided,* That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g.) and shall be referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions: *And provided further,* That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the projected issuance of such licenses and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act

[49] Pursuant to Presidential Memorandum of Oct. 3, 1980 (45 F.R. 67629), the Secretary of State is authorized to determine the "time, terms, and conditions of exports made pursuant to any Executive Order" issued under this paragraph. This memorandum also authorized the Secretary, on behalf of the President, to issue "such rules, regulations and procedures" as he may deem necessary in order to exercise the functions delegated to him by the memorandum.

of 1978, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further,* That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a. (1) of this section.

"c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act.

"Sec. 127.[50] Criteria Governing United States Nuclear Exports.—

"The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

"(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

"(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

"(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 304(d) of the Nuclear Non-Proliferation Act of 1978, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

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[50] Sec. 127 was added by sec. 305 of the Nuclear Non-Proliferation Act of 1978 (92 Stat 136).

"(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

"(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

"(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

"Sec. 128.[51] Additional Export Criterion and Procedures.—

"a. (1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

"(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

"b. The criterion set forth in subsection a. shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection a. which is filed after eighteen months from the date of enactment of this section, or for any such application under which the first export would occur at least twenty-four months after the date of enactment of this section, except as provided in the following paragraphs:

"(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of law: *Provided,* That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-

[51] Sec. 128 was added by sec. 306 of the Non-Proliferation Act of 1978 (92 Stat. 137).

nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

"(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection a. shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

"(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided,* That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further,* That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

"Sec. 129.[52] Conduct Resulting in Termination of Nuclear Exports.—

"No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

"(1) any non-nuclear-weapon state that is found by the President to have, at any time after the effective date of this section,

"(A) detonated a nuclear explosive device; or

"(B) terminated or abrogated IAEA safeguards; or

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[52] Sec. 129 was added by sec. 307 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 138).

"(C) materially violated an IAEA safeguards agreement; or

"(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

"(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,

"(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

"(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

"(C) entered into an agreement after the date of enactment of this section for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security: *Provided,* That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

"Sec. 130.[53] Congressional Review Procedures.—

"a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submis-

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[53] Sec. 130 was added by sec. 308 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 139).

sion of the President required by subsection 123 d., 126 a. (2), 126 b. (2), 128 b., 129, 131 a. (3), or 131 f. (1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided,* That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission and if, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

"b. When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection a.) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a., as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection d.

"d. Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment intro-

duced by the Majority Leader or his designee to insert the phrase, 'does not' in lieu of the word 'does' if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

"e. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

"f. For the purposes of subsections a. through e. of this section, the term 'resolution' means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress (does or does not) favor the _____ transmitted to the Congress by the President on _____, _____.', the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

"g. For the purposes of this section—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

"h. This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection f. of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"**Sec. 131.**[54] **Subsequent Arrangements.**—

"a. (1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Director, the Commission, and the Secretary of Defense: *Provided,* That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common

[54] Sec. 131 was added by sec. 303(a) of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 127).

defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Director declares that he intends to prepare a Nuclear Proliferation Assessment Statement [55] pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the Director's declaration shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.

"(2) If in the Director's view a proposed subsequent arrangement might significantly contribute to proliferation, he may prepare an unclassified Nuclear Proliferation Assessment Statement [55] with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term 'subsequent arrangements' means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

"(A) contracts for the furnishing of nuclear materials and equipment;

"(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

"(C) authorization for the distribution of nuclear materials and equipment pursuant to this Act which is not subject to the procedures set forth in section 111 b., section 126, or section 109 b.;

"(D) arrangements for physical security;

"(E) arrangements for the storage or disposition of irradiated fuel elements;

"(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

"(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

"(3) The United States will give timely consideration to all requests for prior approval, when required by this Act, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such

[55] Sec. 406 of the Nuclear Non-Proliferation Act of 1978 (92 Stat. 148) provides that "No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in the 1954 Act."

agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 123 of this Act.

"(4) All other statutory requirements under other sections of this Act for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to subsection a. (1).

"b. With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

"(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130 g. of this Act) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

"(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978 or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

"(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978, or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in

quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in this view, and that of the Secretary of State, satisfy the standards set forth in the paragraph (2).

"c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section.[56] Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Director shall so declare in his response to the Department of Energy. If the Director declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Director's request, the President waives the sixty-day requirement and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

"d. Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 105 of the Nuclear Non-Proliferation Act of 1978; to in any way limit the

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[56] Such procedures were issued on June 1, 1978. For text, see vol. III, page 635.

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presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other participation; nor the prejudice open and objective consideration of the results of the evaluation.

"e. Notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

"f. (1) With regard to any subsequent arrangement under subsection a. (2)(E) (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

"(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defind in subsection 130 g. of this Act) and has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), which plan has been referred to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions;

"(B) The Secretary of Energy has complied with subsection a.; and

"(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this Act, under sections 54 and 55 and any other applicable sections, and any other requirements of law.

"(2) Subsection (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees

on International Relations and Science and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

"(3) Any plan submitted by the President under subsection f. (1) shall include a detailed discussion, with detailed information, and any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

"(4) For the purposes of this subsection, the term 'foreign spent nuclear fuel' shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or the reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

"CHAPTER 12. CONTROL OF INFORMATION

"Sec. 141. Policy.—It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

"a. Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144; and

"b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

"Sec. 142. Classification and Declassification of Restricted Data.—

"a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

"b. The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

"c. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such

data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

"d. The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection 144 b.

"e. The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information.

"**Sec. 143. Department of Defense Participation.**—The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsections 145 b. and 145 c.[57] to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member of employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145.

"**Sec. 144. International Cooperation.**—

"a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

"(1) refining, purification, and subsequent treatment of source material;

"(2) civilian reactor development;

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[57] Public Law 84-1006 (70 Stat. 1069) (1956), sec. 14, added the words "or any other person authorized access to Restriced Data by the Commission under subsection 145 b." Public Law 87-206 (75 Stat. 475) (1961), sec. 5, deleted the words "subsection 145 b.," and substituted in lieu thereof the words, "subsections 145 b. and 145 c.".

"(3) production of special nuclear material;

"(4) health and safety;

"(5) industrial and other applications of atomic energy for peaceful purposes; and

"(6) research and development relating to the foregoing:

Provided, however, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123, or is undertaken pursuant to an agreement existing on the effective date of this act.[58]

"b.[59] The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

"(1) the development of defense plans;

"(2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;

"(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and

"(4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

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[58] Public Law 85–479 (72 Stat. 276) (1958), sec. 5, amended subsec. a of sec. 144 by inserting the word "civilian" before the words "reactor development" in clause (2) thereof.

[59] Public Law 85–479 (72 Stat. 276) (1958), sec. 6, amended sec. 144 by substituting a new subsec. b. Before amendment subsec. b read as follows:

"b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data as is necessary to—

"(1) the development of defense plans;

"(2) the training of personnel in the employment of and defense against atomic weapons; and

"(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons.

while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That no such cooperation shall involve communication of Restricted Data relating to the design or fabrication of atomic weapons except with regard to external characteristics, including size, weight, and shape, yields and effects, and systems employed in the delivery or use thereof but not including any data in these categories unless in the joint judgment of the Commission and the Department of Defense such data will not reveal important information concerning the design or fabrication of the nuclear components of an atomic weapon: *And provided further,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123."

"c.[60] In addition to the cooperation authorized in subsections 144 a. and 144 b., the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

"(1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

"(2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, or military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

"d.[60] The President may authorize an agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144 a., b., or c., such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

"Sec. 145. Restrictions.—

"a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

"b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

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"Sec. 147.[61] Safeguards Information.—

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[60] Public Law 85-479 (72 Stat. 276) (1958), sec. 7, amended sec. 144 by adding subsecs. c and d.
[61] Sec. 147 was added by sec. 207(a)(1) of Public Law 96-295 (94 Stat. 788).

"a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

"(1) control and accounting procedures or security measures (including security plans, procedures or equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

"(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

"(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

"(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

"(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

"b. For the purposes of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

"c. Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant

to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

"d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

"(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

"(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

"(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

"e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

"(1) identify any information protected from disclosure pursuant to such regulation or order;

"(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion or sabotage of such material or such facility, as specified under subsection a. of this section; and

"(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

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"CHAPTER 17. JOINT COMMITTEE ON ATOMIC ENERGY

[REPEALED—1977][62]

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"CHAPTER 19. MISCELLANEOUS

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[62] Sec. 302(a) of this act, as added by Public Law 95–110, repealed ch. 17. For matters regarding the reassignment of functions and responsibilities of the Joint Committee, see ch. 20.

"**Sec. 251. Report to Congress.**—The Commission shall submit to the Congress, in January[63] of each year, a report concerning the activities of the Commission. The Commission shall include in such report, and shall at such other times as it deems desirable submit to the Congress, such recommendations for additional legislation as the Commission deems necessary or desirable.

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"CHAPTER 20. JOINT COMMITTEE ON ATOMIC ENERGY ABOLISHED; FUNCTIONS AND RESPONSIBILITIES REASSIGNED[64]

"Sec. 301. Joint Committee on Atomic Energy Abolished.—

"a. The Joint Committee on Atomic Energy is abolished.

"b. Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after the date of enactment of this section, be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

"c. All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

"Sec. 302. Transfers of Certain Functions of the Joint Committee on Atomic Energy and Conforming Amendments to Certain Other Laws.—

"a. Effective on the date of enactment of this section, chapter 17 of this Act is repealed.

"b. Section 103 of the Atomic Energy Community Act of 1955, as amended, is repealed.

"c. Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

"(1) striking the subsection designation '(a)'; and

"(2) repealing subsection (b).

"d. Section 252(a)(3) of the Legislative Reorganization Act of 1970 is repealed.

"Sec. 303. Information and Assistance to Congressional Committees.—

"a. The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

"b. The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representa-

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[63] Public Law 86-43 (73 Stat. 73) (1959), amended sec. 251 by deleting the words "and July" after the word "January".

[64] Chapter 20 was added by Public Law 95-110 (91 Stat. 884).

tives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

"c. Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

"d. The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however,* That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Administration.".

b. EURATOM Cooperation Act of 1958, as amended

Public Law 85-846 [S. 4273], 72 Stat. 1084, 42 U.S.C. 2291-2296, approved August 28, 1958; as amended by Public Law 87-206, 75 Stat. 479, approved September 6, 1961; Public Law 88-394, 78 Stat. 376, approved August 1, 1964; Public Law 90-190, 81 Stat. 578, approved December 14, 1967; and by Public Law 93-88, 87 Stat. 296, approved August 14, 1973

AN ACT To provide for cooperation with the European Atomic Energy Community.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "EURATOM Cooperation Act of 1958".

Sec. 2. As used in this Act—

(a) "The Community" means the European Atomic Energy Community (EURATOM).

(b) The "Commission" means the Atomic Energy Commission, as established by the Atomic Energy Act of 1954, as amended.

(c) "Joint program" means the cooperative program established by the Community and the United States and carried out in accordance with the provisions of an agreement for cooperation entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended, to bring into operation in the territory of the members of the Community powerplants using nuclear reactors of types selected by the Commission and the Community, having as a goal a total installed capacity of approximately one million kilowatts of electricity by December 31, 1963, except that two reactors may be selected to be in operation by December 31, 1965.

(d) All other terms used in this Act shall have the same meaning as terms described in section 11 of the Atomic Energy Act of 1954, as amended.

Sec. 3. There is hereby authorized to be appropriated to the Commission, in accordance with the provisions of section 261(a)(2) of the Atomic Energy Act of 1954, as amended, the sum of $3,000,000 [1] as an initial authorization for fiscal year 1959 for use in a cooperative program of research and development in connection with the types of reactors selected by the Commission and the Community under the joint program. The Commission may enter into contracts for such periods as it deems necessary, but in no event to exceed five years, for the purpose of conducting the research and development program authorized by this section: *Provided,* That the Community authorizes an equivalent amount for use in the cooperative program of research and development.

Sec. 4. The Commission is authorized, within limits of amounts which may hereafter be authorized to be appropriated in accord-

[1] Public Law 86-50 (sec. 109), Public Law 87-701 (sec. 109), Public Law 88-72 (sec. 103), Public Law 88-332 (sec. 101(a)), and Public Law 89-32 (sec. 101), authorized appropriation of an additional $7,000,000, $5,000,000, $7,500,000, $3,000,000, and $3,000,000, respectively.

ance with the provisions of section 261(a)(2) of the Atomic Energy Act of 1954, as amended, to make guarantee contracts which shall in the aggregate not exceed a total contingent liability of $90,000,000 designed to assure that the charges to an operator of a reactor constructed under the joint program for fabricating, processing, and transporting fuel will be no greater than would result under the fuel fabricating and fuel life guarantees which the Commission shall establish for such reactor. Within the limits of such amounts, the Commission is authorized to make contracts under this section, without regard to the provisions of sections 3679 and 3709 of the Revised Statutes, as amended, for such periods of time as it determines to be necessary: *Provided, however,* That no such contracts may extend for a period longer than that necessary to cover fuel loaded into a reactor constructed under the joint program during the first ten years of the reactor operation or prior to December 31, 1973 (or December 31, 1975, for not more than two reactors selected under section 2(c)), whichever is earlier. In establishing criteria for the selection of projects and in entering into such guarantee contracts, the Commission shall be guided by, but not limited to, the following principles:

(a) The Commission shall encourage a strong and competitive atomic equipment manufacturing industry in the United States designed to provide diversified sources of supply for reactor parts and reactor fuel elements under the joint program;

(b) The guarantee shall be consistent with the provisions of this Act and of Attachment A to the Memorandum of Understanding between the Government of the United States and the Community, signed in Brussels on May 29, 1958, and in Washington, District of Columbia, on June 12, 1958, and transmitted to Congress on June 23, 1958;

(c)[2] The Commission shall establish and publish criteria for computing the maximum fuel element charge and minimum fuel element life to be guaranteed by the manufacturer as a basis for inviting and evaluating proposals.

(d) The guarantee by the manufacturer shall be as favorable as any other guarantee offered by the manufacturer for any comparable fuel element within a reasonable time period; and

(e) The Commission shall obtain a royalty-free, nonexclusive, irrevocable license for governmental purposes to any patents on inventions or discoveries made or conceived by the manufacturer in the course of development or fabrication of fuel elements during the period covered by the Commission's guarantee.

Sec. 5.[3] Pursuant to the provisions of section 54 of the Atomic Energy Act of 1954, as amended, there is hereby authorized for sale or lease to the Community—

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[2] Public Law 87-206 (75 Stat. 475), amended sec. 4(c). Prior to amendment it read: "The commission shall establish and publish minimum levels of fuel element cost and life to be guaranteed by the manufacturer as a basis for inviting and evaluating proposals."

[3] Public Law 90-190 (81 Stat. 575), sec. 13, amended sec. 5 by substituting a new section. Before amendment. Sec. 5 read as follows:

"Sec. 5. Pursuant to the provisions of section 54 of the Atomic Energy Act of 1954, as amended, there is hereby authorized for sale or lease to the Community:

Seventy thousand kilograms of contained uranium 235
Five hundred kilograms of plutonium
Thirty kilograms of uranium 233

an amount of contained uranium 235 which does not exceed that necessary to support the fuel cycle of power reactors located within the Community having a total installed capacity of thirty-five thousand megawatts of electric energy, together with twenty-five thousand kilograms of contained uranium 235 for other purposes; [4]

one thousand five hundred kilograms of plutonium; and thirty kilograms of uranium 233;

in accordance with the provisions of an agreement or agreements for cooperation between the Government of the United States and the Community entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended: *Provided,* that the Government of the United States obtains the equivalent of a first lien on any such material sold to the Community for which payment is not made in full at the time of transfer. The Commission may enter into contracts to provide, after December 31, 1968, for the producing or enriching of all, or part of, the above-mentioned contained uranium 235 pursuant to the provisions of subsection 161 v. (B) of said Act, as amended in lieu of sale or lease thereof.

Sec. 6. (a) The Atomic Energy Commission is authorized to purchase or otherwise acquire from the Community special nuclear material or any interest therein from reactors constructed under the joint program in accordance with the terms of an agreement for cooperation entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended: *Provided,* That neither plutonium nor uranium 233 nor any interest therein shall be acquired under this section in excess of the total quantities authorized by law. The Commission is hereby authorized to acquire from the Community pursuant to this section up to four thousand one hundred kilograms of plutonium for use only for peaceful purposes.

(b) Any contract made under the provisions of this section to acquire plutonium or any interest therein may be at such prices and for such period of time as the Commission may deem necessary: *Provided,* That with respect to plutonium produced in any reactor constructed under the joint program, no such contract shall be for a period greater than ten years of operation of such reactors or December 31, 1973 (or December 31, 1975, for not more than two reactors selected under section 2(c)), whichever is earlier: *And provided further,* That no such contract shall provide for compensation or the payment of a purchase price in excess of the Commission's established price in effect at the time of delivery to the Commission for such material as fuel in a nuclear reactor.

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in accordance with the provisions of an agreement or agreements for cooperation between the Government of the United States and the Community entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954. as amended: *Provided,* That the Government of the United States obtains the equivalent of a first lien on any such material sold to the Community for which payment is not made in full at the time of transfer."

Sec. 5 had earlier been amended by Public Law 88-394 (78 Stat. 376), sec. 5, and by Public Law 87-206 (75 Stat. 475), sec. 19.

[4] Public Law 93-88 (87 Stat. 296), amended this paragraph. Previously, it read "two hundred fifteen thousand kilograms of contained uranium 235;".

(c) Any contract made under the provisions of this section to acquire uranium enriched in the isotope uranium 235 may be at such price and for such period of time as the Commission may deem necessary: *Provided,* That no such contract shall be for a period of time extending beyond the terminal date of the agreement for cooperation with the Community or provide for the acquisition of uranium enriched in the isotope U–235 in excess of the quantities of such material that have been distributed to the Community by the Commission less the quantity consumed in the nuclear reactors involved in the joint program: *And provided further,* That no such contract shall provide for compensation or the payment of a purchase price in excess of the Atomic Energy Commission's established charges for such material in effect at the time delivery is made to the Commission.

(d) Any contract made under this section for the purchase of special nuclear material or any interest therein may be made without regard to the provisions of section 3679 of the Revised Statutes, as amended.

(e) Any contract made under this section may be made without regard to section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable.

"**Sec. 7.** The Government of the United States of America shall not be liable for any damages or third party liability arising out of or resulting from the joint program: *Provided, however,* That nothing in this section shall deprive any person of any rights under section 170 of the Atomic Energy Act of 1954, as amended. *And provided further,* That nothing in this section shall apply to arrangements made by the Commission under a research and development program authorized in section 3.[5] The Government of the United States shall take such steps as may be necessary, including appropriate disclaimer or indemnity arrangements, in order to carry out the provisions of this section.".

[5] The proviso was added by Public Law 87–206 (75 Stat. 475).

c. EURATOM Resolution

Senate Concurrent Resolution 116, 85th Congress, 2d Session, passed August 23, 1958

Whereas the United States of America has instituted a program of international cooperation to make available to cooperating nations the benefits of peaceful applications of atomic energy; and

Whereas the United States of America and the European Atomic Energy Community (EURATOM) have entered into an agreement providing for cooperation in programs designed to advance the peaceful application of atomic energy: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That pursuant to the provisions of section 11(l) and 124 of the Atomic Energy Act of 1954, as amended, the agreement between the Government of the United States of America and the European Atomic Energy Community (EURATOM), signed at Brussels on May 29, 1958, and at Washington on June 19, 1958, concerning cooperation between the parties in programs for the advancement of the peaceful application of atomic energy, be and hereby is approved. This resolution does not constitute approval or disapproval of the memorandum of understanding, or any other agreements which have not been formally approved or authorized by the Congress.

d. Executive Order 12351, March 9, 1982, 47 F.R. 10505

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended by Executive Orders No. 12193 and No. 12295, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States nonproliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1983.

e. International Atomic Energy Agency Participation Act of 1957, as amended

Partial text of Public Law 85-177 [H.R. 8992], 22 U.S.C. 2021-2026, 71 Stat. 453, approved August 28, 1957; as amended by Public Law 85-795, 72 Stat. 959, approved August 28, 1958; Public Law 89-348, 79 Stat. 1310, approved November 8, 1965; and by Public Law 96-465 [H.R. 6790], 94 Stat. 2071 at 2161, approved October 17, 1980

AN ACT To provide for the appointment of representatives of the United States in the organs of the International Atomic Energy Agency, and to make other provisions with respect to the participation of the United States in that Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Atomic Energy Agency Participation Act of 1957".

Sec. 2. (a) The President, by and with the advice and consent of the Senate, shall appoint a representative and a deputy representative of the United States to the International Atomic Energy Agency (hereinafter referred to as the "Agency"), who shall hold office at the pleasure of the President. Such representative and deputy representative shall represent the United States on the Board of Governors of the Agency, may represent the United States at the General Conference, and may serve ex officio as United States representative on any organ of that Agency, and shall perform such other functions in connection with the participation of the United States in the Agency as the President may from time to time direct.

(b) The President, by and with the advice and consent of the Senate, may appoint or designate from time to time to attend a specified session or specified sessions of the General Conference of the Agency a representative of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Conference.

(c) The President may also appoint or designate from time to time such other persons as he may deem necessary to represent the United States in the organs of the Agency. The President may designate any officer of the United States Goverment, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States on the Board of Governors or to the General Conference of the Agency in the absence or disability of the representative and deputy representative appointed under section 2(a) or in lieu of such representatives in connection with a specified subject matter.

(d) All persons appointed or designated in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed

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but not in excess of rates authorized by sections 401, 402, and 403 of the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsection (b) or subsection (c) of this section as a delegate or representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation.[1] Any person who receives compensation pursuant to the provisions of this subsection may be granted allowances and benefits not to exceed those received under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service and Foreign Service officers occupying positions of equivalent importance.[2]

Sec. 3. The participation of the United States in the International Atomic Energy Agency shall be consistent with and in furtherance of the purposes of the Agency set forth in its statute and the policy concerning the development, use, and control of atomic energy set forth in the Atomic Energy Act of 1954, as amended. [The President shall, from time to time as occasion may require, but not less than once each year, make reports to the Congress on the activities of the International Atomic Energy Agency and on the participation of the United States therein.][3] In addition to any other requirements of law, the Department of State and the Atomic Energy Commission shall keep the Joint Committee on Atomic Energy, the House Committee on Foreign Affairs, and the Senate Committee on Foreign Relations, as appropriate, currently informed with respect to the activities of the Agency and the participation of the United States therein.

Sec. 4. The representatives provided for in section 2 hereof, when representing the United States in the organs of the Agency, shall, at all times, act in accordance with the instructions of the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the statute of the International Atomic Energy Agency.

Sec. 5. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the International Atomic Energy Agency as apportioned by the Agency in accordance with paragraph (D) of article XIV of the statute of the Agency, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof and of their appropriate staffs, including personal services without regard to the civil service laws and the Classification Act of 1949, as amended; travel

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[1] References in this subsection to sections of the Foreign Service Act of 1980 and to the Senior Foreign Service were inserted by sec. 2206(a)(7) of Public Law 94-465 (94 Stat. 2161), effective Feb. 15, 1981. These replaced a reference to secs. 411 and 412 of the Foreign Service Act of 1946.

[2] The references to the Foreign Service Act of 1980 and to the Senior Foreign Service were inserted by sec. 2206(a)(7) of Public Law 96-465 (94 Stat. 2161), effective Feb. 15, 1981.

[3] Public Law 89-348 (79 Stat. 1310), sec. 1(20), amended Public Law 85-177 by repealing the requirement of a report to the Congress by the President not less than once each year on the activities of the International Atomic Energy Agency and on the participation of the United States therein.

expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, as amended, and section 10 of the Act of March 3, 1933, as amended; salaries as authorized by the Foreign Service Act of 1980,[4] or as authorized by the Atomic Energy Act of 1954, as amended, and expenses and allowances of personnel and dependents as authorized by the Foreign Service Act of 1980;[4] services as authorized by sec. 15 of the Act of Aug. 2, 1946 (5 U.S.C. 55a);[5] translating and other services, by contract; hire of passenger motor vehicles and other local transportation; printing and binding without regard to section II of the Act of March 1, 1919 (44 U.S.C. 111); official functions and courtesies; such sums as may be necessary to defray the expenses of United States participation in the Preparatory Commission for the Agency, established pursuant to annex I of the statute of the Agency; and such other expenses as may be authorized by the Secretary of State.

Sec. 6. (a)[6] Notwithstanding any other provision of law, Executive order or regulation, a Federal employee who, with the approval of the Federal agency, or the head of the department by which he is employed, leaves his position to enter the employ of the Agency shall not be considered for the purposes of the Civil Service Retirement Act, as amended, and the Federal Employees' Group Life Insurance Act of 1954, as amended, as separated from his Federal position during such employment with the Agency but not to extend beyond the first three consecutive years of his entering the employ of the Agency: *Provided,* (1) That he shall pay to the Civil Service Commission[7] within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency, and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group Life Insurance Act of 1954, as amended, shall be made during the term of his employment with the International Atomic Energy Agency. If such employee, within three years from the date of his employment with the Agency, and within ninety days from the date he is separated without prejudice from the Agency, applies to be restored to his Federal position, he shall within thirty days of such application be restored to such position or to a position of like seniority, status and pay.

(b) Notwithstanding any other provision of law, Executive order or regulation, any Presidential appointee or elected officer who leaves his position to enter, or who within ninety days after the termination of his position enters, the employ of the Agency, shall be entitled to the coverage and benefits of the Civil Service Retire-

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[4] Reference to the Foreign Service Act of 1980 was inserted in lieu of a reference to the Foreign Service Act of 1946 by sec. 2206(a)(7) of Public Law 96-465 (94 Stat. 2162), effective Feb. 15, 1981.

[5] Public Law 89-554 (80 Stat. 416) codified sec. 15 of the Act of Aug. 2, 1946, as 5 U.S.C. 3109.

[6] Sec. 7 of Public Law 85-795 (72 Stat. 959), approved Aug. 28, 1958, repealed sec. 6(a), "except that it shall be considered to remain in effect with respect to any employee subject thereto who is serving as an employee of the International Atomic Energy Agency on the date of enactment of this Act and who does not make the election referred to in sec. 6 and for the purposes of any rights and benefits vested thereunder prior to such date."

[7] The Office of Personnel Management was substituted for the Civil Service Commission pursuant to sec. 102 of Reorganization Plan No. 2 of 1978.

ment Act, as amended, and the Federal Employees' Group Life Insurance Act of 1954, as amended, but not beyond the earlier of either the termination of his employment with the Agency or the expiration of three years from the date he entered employment with the Agency: *Provided*, (1) That he shall pay to the Civil Service Commission [7] within ninety days from the date he is separated without prejudice from the Agency all necessary deductions and agency contributions for coverage under the Civil Service Retirement Act for the period of his employment by the Agency and (2) That all deductions and agency contributions necessary for continued coverage under the Federal Employees' Group Life Insurance Act of 1954, as amended, shall be made during the term of his employment with the Agency.

(c) The President is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section and to protect the retirement, insurance and such other civil service rights and privileges as the President may find appropriate.

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Sec. 8. In the event of an amendment to the Statute of the Agency being adopted in accordance with article XVIII–C of the Statute to which the Senate by formal vote shall refuse its advice and consent, upon notification by the Senate to the President of such refusal to advise and consent, all further authority under sections 2, 3, 4, and 5 of this Act, as amended, shall terminate: *Provided, however,* That the Secretary of State, under such regulations as the President shall promulgate, shall have the necessary authority to complete the prompt and orderly settlement of obligations and commitments to the Agency already incurred and pay salaries, allowances, travel expenses, and other expenses required for a prompt and orderly termination of United States participation in the Agency: *And provided further,* That the representative and the deputy representative of the United States to the Agency, and such other officers or employees representing the United States in the Agency, under such regulations as the President shall promulgate, shall retain their authority under this Act for such time as may be necessary to complete the settlement of matters arising out of the United States participation in the Agency.

f. Executive Orders Concerning International Atomic Energy Cooperation

(1) Executive Order 11057, October 18, 1962, 27 F.R. 10289, 3 CFR, 1959–63 Comp., p. 648

AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE DEPARTMENT OF STATE

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 et seq.), and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the Act (42 U.S.C. 2164(b)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission [1] and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended,

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided,* That no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures, adopted by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

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[1] Functions of the Atomic Energy Commission under this Executive order were modified so that such functions would be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, pursuant to sec. 4(a)(1) of Executive Order 12038, Feb. 3, 1978, 43 F.R. 4957.

(2) Executive Order 10899, December 9, 1960, 25 F.R. 12729, 3 CFR, 1959–63 Comp., p. 427

AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE CENTRAL INTELLIGENCE AGENCY

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 et seq.), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsections 144 a, b, or c of the Act (42 U.S.C. 2162 (a), (b), or (c)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162(d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission [1] and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841,

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided,* That no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission [1] and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

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[1] Functions of the Atomic Energy Commission under this Executive order were modified so that such functions would be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, pursuant to sec. 4(a)(1) of Executive Order 12038, Feb. 3, 1978, 43 F.R. 4957.

(3) Executive Order 10841, September 30, 1959, 24 F.R. 7941, 3 CFR, 1959–63 Comp., p. 375; as amended by Executive Order 10956, August 12, 1961, 26 F.R. 7315, 3 CFR 1959–63 Comp., p. 482

PROVIDING FOR THE CARRYING OUT OF CERTAIN PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, RELATING TO INTERNATIONAL COOPERATION

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), herein referred to as the Act, and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

Section 1. Whenever the President, pursuant to section 123 of the Act, has approved and authorized the execution of a proposed agreement providing for cooperation pursuant to section 91c, 144a, 144b, or 144c of the Act (42 U.S.C. 2121(c), 2164(a), 2164(b), 2164(c)), such approval and authorization by the President shall constitute his authorization to cooperate to the extent provided for in the agreement and in the manner provided for in section 91c, 144a, 144b, or 144c, as pertinent. In respect of sections 91c, 144b, and 144c, authorizations by the President to cooperate shall be subject to the requirements of section 123d of the Act and shall also be subjected to appropriate determinations made pursuant to section 2 of this order.

Sec. 2. (a) The Secretary of Defense and the Atomic Energy Commission are hereby designated and empowered to exercise jointly, after consultation with executive agencies as may be appropriate, the following described authority without the approval, ratification, or other action of the President:

(1) The authority vested in the President by section 91c of the Act to determine that the proposed cooperation and each proposed transfer arrangement referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security.

(2) The authority vested in the President by section 144b of the Act to determine that the proposed cooperation and the proposed communication of Restricted Data referred to in that section will promote and will not constitute an unreasonable risk to the common defense and security: *Provided,* That each determination made under this paragraph shall be referred to the President and, unless disapproved by him, shall become effective fifteen days after such referral or at such later time as may be specified in the determination.[1]

(3) The authority vested in the President by section 144c of the Act to determine that the proposed cooperation and the communication of the proposed Restricted Data referred to in that section

[1] This provision was added by Executive Order 10956, Aug. 12, 1961, 26 F.R. 7315.

will promote and will not constitute an unreasonsble risk to the common defense and security.

(b) Whenever the Secretary of Defense and the Atomic Energy Commission are unable to agree upon a joint determination under the provisions of subsection (a) of this section, the recommendations of each of them, together with the recommendations of other agencies concerned, shall be referred to the President, and the determination shall be made by the President.

Sec. 3. This order shall not be construed as delegating the function vested in the President by section 91c of the Act of approving programs proposed under that section.

Sec. 4. (a) The functions of negotiating and entering into international agreements under the Act shall be performed by or under the authority of the Secretary of State.

(b) International cooperation under the Act shall be subject to the responsibilities of the Secretary of State with respect to the foreign policy of the United States pertinent thereto.

2. Nuclear Non-Proliferation Act of 1978 and Related Materials

a. Nuclear Non-Proliferation Act of 1978

Partial text of Public Law 95-242 [H.R. 8638], 92 Stat. 120, approved March 10, 1978

AN ACT To provide for more efficient and effective control over the proliferation of nuclear explosive capability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Nuclear Non-Proliferation Act of 1978."

NOTE.—Sections of this Act which have been omitted amend the Atomic Energy Act of 1954. See the appropriate sections of the 1954 Act beginning on page 445 for the text of these omitted sections.

STATEMENT OF POLICY

Sec. 2.[1] The Congress finds and declares that the proliferation of nuclear explosive devices or of the direct capability to manufacture or otherwise acquire such devices poses a grave threat to the security interests of the United States and to continued international progress toward world peace and development. Recent events emphasize the urgency of this threat and the imperative need to increase the effectiveness of international safeguards and controls on peaceful nuclear activities to prevent proliferation. Accordingly, it is the policy of the United States to—

(a) actively pursue through international initiatives mechanisms for fuel supply assurances and the establishment of more effective international controls over the transfer and use of nuclear materials and equipment and nuclear technology for peaceful purposes in order to prevent proliferation, including the establishment of common international sanctions;

(b) take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies by establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses;

[1] 22 U.S.C. 3201.

(c) strongly encourage nations which have not ratified the Treaty on the Non-Proliferation of Nuclear Weapons to do so at the earliest possible date;[2] and

(d) cooperate with foreign nations in identifying and adapting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with the economic and material resources of those nations and environmental protection.

STATEMENT OF PURPOSE

Sec. 3.[3] It is the purpose of this Act to promote the policies set forth above by—

(a) establishing a more effective framework for international cooperation to meet the energy needs of all nations and to ensure that the worldwide development of peaceful nuclear activities and the export by any nation of nuclear materials and equipment and nuclear technology intended for use in peaceful nuclear activities do not contribute to proliferation;

(b) authorizing the United States to take such actions as are required to ensure that it will act reliably in meeting its commitment to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies;

(c) providing incentives to the other nations of the world to join in such international cooperative efforts and to ratify the Treaty; and

(d) ensuring effective controls by the United States over its exports of nuclear materials and equipment and of nuclear technology.

DEFINITIONS

Sec. 4.[4] (a) As used in this Act, the term—

(1) "Commission" means the Nuclear Regulatory Commission;

(2) "Director" means the Director of the Arms Control and Disarmament Agency;

(3) "IAEA" means International Atomic Energy Agency;

(4) "nuclear materials and equipment" means source material, special nuclear material, production facilities, utilization facilities, and components, items or substances determined to have significance for nuclear explosive purposes pursuant to subsection 109 b. of the 1954 Act;

(5) "physical security measures" means measures to reasonably ensure that source or special nuclear material will only be used for authorized purpose and to prevent theft and sabotage;

(6) "sensitive nuclear technology" means any information (including information incorporated in a production or utilization facility or important component part thereof) which is not

[2] This policy was again reiterated by Congress in sec. 507 of the International Development Cooperation Act of 1979 (Public Law 96-53; 93 Stat. 378). Such sec. 507 also called for a report from the Secretary of State by Nov. 1, 1979. on steps taken by the Department of State to encourage nations which are not parties to the treaty to become parties. See vol. I, page 276 for complete text of sec. 507.

[3] 22 U.S.C. 3202.

[4] 22 U.S.C. 3203.

available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the 1954 Act;

(7) "1954 Act" means the Atomic Energy Act of 1954, as amended; and

(8) "the Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons.[5]

(b) All other terms used in this Act not defined in this section shall have the meanings ascribed to them by the 1954 Act, the Energy Reorganization Act of 1974, and the Treaty.

TITLE I—UNITED STATES INITIATIVES TO PROVIDE ADEQUATE NUCLEAR FUEL SUPPLY

POLICY

Sec. 101.[6] The United States, as a matter of national policy, shall take such actions and institute such measures as may be necessary and feasible to assure other nations and groups of nations that may seek to utilize the benefits of atomic energy for peaceful purposes that it will provide a reliable supply of nuclear fuel to those nations and groups of nations which adhere to policies designed to prevent proliferation. Such nuclear fuel shall be provided under agreements entered into pursuant to section 161 of the 1954 Act or as otherwise authorized by law. The United States shall ensure that it will have available the capacity on a long-term basis to enter into new fuel supply commitments consistent with its nonproliferation policies and domestic energy needs. The Commission shall, on a timely basis, authorize the export of nuclear materials and equipment when all the applicable statutory requirements are met.

URANIUM ENRICHMENT CAPACITY

Sec. 102.[7] The Secretary of Energy is directed to initiate construction planning and design, construction, and operation activities for expansion of uranium enrichment capacity, as elsewhere provided by law. Further the Secretary as well as the Nuclear Regulatory Commission, the Secretary of State, and the Director of the Arms Control and Disarmament Agency are directed to establish and implement procedures which will ensure to the maximum extent feasible, consistent with this Act, orderly processing of subsequent arrangements and export licenses with minimum time delay.

REPORT

Sec. 103. The President shall promptly undertake a study to determine the need for additional United States enrichment capacity to meet domestic and foreign needs and to promote United States

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[5] For text of treaty, see page 34, vol. III.
[6] 22 U.S.C. 3221.
[7] 22 U.S.C. 3222.

nonproliferation objectives abroad. The President shall report to the Congress on the results of this study within twelve months after the date of enactment of this Act.

INTERNATIONAL UNDERTAKINGS

Sec. 104.[8] (a) Consistent with section 105 of this Act, the President shall institute prompt discussions with other nations and groups of nations, including both supplier and recipient nations, to develop international approaches for meeting future worldwide nuclear fuel needs. In particular, the President is authorized and urged to seek to negotiate as soon as practicable with nations possessing nuclear fuel production facilities or source material, and such other nations and groups of nations, such as the IAEA, as may be deemed appropriate, with a view toward the timely establishment of binding international undertakings providing for—

(1) the establishment of an international nuclear fuel authority (INFA) with responsibility for providing agreed upon fuel services and allocating agreed upon quantities of fuel resources to ensure fuel supply on reasonable terms in accordance with agreements between INFA and supplier and recipient nations;

(2) a set of conditions consistent with subsection (d) under which international fuel assurances under INFA auspices will be provided to recipient nations, including conditions which will ensure that the transferred materials will not be used for nuclear explosive devices;

(3) devising, consistent with the policy goals set forth in section 403 of this Act, feasible and environmentally sound approaches for the siting, development, and management under effective international auspices and inspection of facilities for the provision of nuclear fuel services, including the storage of special nuclear material;

(4) the establishment of repositories for the storage of spent nuclear reactor fuel under effective international auspices and inspection;

(5) the establishment of arrangements under which nations placing spent fuel in such repositories would receive appropriate compensation for the energy content of such spent fuel if recovery of such energy content is deemed necessary or desirable; and

(6) sanctions for violation of the provisions of or for abrogation of such binding international undertakings.

(b) The President shall submit to Congress not later than six months after the date of enactment of this Act proposals for initial fuel assurances, including creation of an interim stockpile of uranium enriched to less than 20 percent in the uranium isotope 235 (low-enriched uranium) to be available for transfer pursuant to a sales arrangement to nations which adhere to strict policies designed to prevent proliferation when and if necessary to ensure continuity of nuclear fuel supply to such nations. Such submission shall include proposals for the transfer of low-enriched uranium up to an amount sufficient to produce 100,000 MWe years of power

[8] 22 U.S.C. 3223.

from light water nuclear reactors, and shall also include proposals for seeking contributions from other supplier nations to such an interim stockpile pending the establishment of INFA.

(c) The President shall, in the report required by section 103, also address the desirability of and options for foreign participation, including investment, in new United States uranium enrichment facilities. This report shall also address the arrangements that would be required to implement such participation and the commitments that would be required as a condition of such participation. This report shall be accompanied by any proposed legislation to implement these arrangements.

(d) The fuel assurances contemplated by this section shall be for the benefit of nations that adhere to policies designed to prevent proliferation. In negotiating the binding international undertakings called for in this section, the President shall, in particular, seek to ensure that the benefits of such undertakings are available to non-nuclear-weapon states only if such states accept IAEA safeguards on all their peaceful nuclear activities, do not manufacture or otherwise acquire any nuclear explosive device, do not establish any new enrichment or reprocessing facilities under their de facto or de jure control, and place any such existing facilities under effective international auspices and inspection.

(e) The report required by section 601 shall include information on the progress made in any negotiations pursuant to this section.

(f)(1) The President may not enter into any binding international undertaking negotiated pursuant to subsection (a) which is not a treaty until such time as such proposed undertaking has been submitted to the Congress and has been approved by concurrent resolution.

(2) The proposals prepared pursuant to subsection (b) shall be submitted to the Congress as part of an annual authorization Act for the Department of Energy.

REEVALUATION OF NUCLEAR FUEL CYCLE

Sec. 105.[9] The President shall take immediate initiatives to invite all nuclear supplier and recipient nations to reevaluate all aspects of the nuclear fuel cycle, with emphasis on alternatives to an economy based on the separation of pure plutonium or the presence of high enriched uranium, methods to deal with spent fuel storage, and methods to improve the safeguards for existing nuclear technology. The President shall, in the first report required by section 601, detail the progress of such international reevaluation.

TITLE II—UNITED STATES INITIATIVES TO STRENGTHEN THE INTERNATIONAL SAFEGUARDS SYSTEM

POLICY

Sec. 201.[10] The United States is committed to continued strong support for the principles of the Treaty on the Non-Proliferation of

[9] 22 U.S.C. 3224.
[10] 22 U.S.C. 3241.

Nuclear Weapons, to a strengthened and more effective International Atomic Energy Agency and to a comprehensive safeguards system administered by the Agency to deter proliferation. Accordingly, the United States shall seek to act with other nations to—

(a) continue to strengthen the safeguards program of the IAEA and, in order to implement this section, contribute funds, technical resources, and other support to assist the IAEA in effectively implementing safeguards;

(b) ensure that the IAEA has the resources to carry out the provisions of Article XII of the Statute of the IAEA;

(c) improve the IAEA safeguards system (including accountability) to ensure—

(1) the timely detection of a possible diversion of source or special nuclear materials which could be used for nuclear explosive devices;

(2) the timely dissemination of information regarding such diversion; and

(3) the timely implementation of internationally agreed procedures in the event of such diversion;

(d) ensure that the IAEA receives on a timely basis the data needed for it to administer an effective and comprehensive international safeguards program and that the IAEA provides timely notice to the world community of any evidence of a violation of any safeguards agreement to which it is a party; and

(e) encourage the IAEA, to the maximum degree consistent with the Statute, to provide nations which supply nuclear materials and equipment with the data needed to assure such nations of adherence to bilateral commitments applicable to such supply.

TRAINING PROGRAM

Sec. 202.[11] The Department of Energy, in consultation with the Commission, shall establish and operate a safeguards and physical security training program to be made available to persons from nations and groups of nations which have developed or acquired, or may be expected to develop or acquire, nuclear materials and equipment for use for peaceful purposes. Any such program shall include training in the most advanced safeguards and physical security techniques and technology, consistent with the national security interests of the United States.

NEGOTIATIONS

Sec. 203.[12] The United States shall seek to negotiate with other nations and groups of nations to—

(1) adopt general principles and procedures, including common international sanctions, to be followed in the event that a nation violates any material obligation with respect to the peaceful use of nuclear materials and equipment or nuclear technology, or in the event that any nation violates the

[11] 22 U.S.C. 3242.
[12] 22 U.S.C. 3243.

principles of the Treaty, including the detonation by a non-nuclear-weapon state of a nuclear explosive device; and

(2) establish international procedures to be followed in the event of diversion, theft, or sabotage of nuclear materials or sabotage of nuclear facilities, and for recovering nuclear materials that have been lost or stolen, or obtained or used by a nation or by any person or group in contravention of the principles of the Treaty.

TITLE III—EXPORT ORGANIZATION AND CRITERIA

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EXPORT LICENSING PROCEDURES

Sec. 304. (a) * * *[13]

(b)[14] Within one hundred and twenty days of the date of enactment of this Act, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act, including such public hearings and access to information as the commission deems appropriate: *Provided,* That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further,* That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

(c)[14] The procedures to be established pursuant to subsection (b) shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding section 189 a. of the 1954 Act, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

(d)[15] Within sixty days of the date of enactment of this Act, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, the Secretary of Defense, and the Director, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgment are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to

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[13] Subsec. (a) added a new sec. 126 to the 1954 act regarding export licensing procedures. For text of sec. 126, see page 473.

[14] 42 U.S.C. 2155a.

[15] 42 U.S.C. 2156a.

in paragraph (3) of section 127 of the 1954 Act taking into consideration variations in risks to security as appropriate.

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COMPONENT AND OTHER PARTS OF FACILITIES

Sec. 309. (a) * * *[16]

(b)[17] The Commission, not later than one hundred and twenty days after the date of the enactment of this Act, shall publish regulations to implement the provisions of subsections b. and c. of section 109 of the 1954 Act. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, the Department of Commerce, and the Arms Control and Disarmament Agency.

(c)[17] The President, within not more than one hundred and twenty days after the date of enactment of this Act, shall publish procedures regarding the control by the Department of Commerce, over all export items, other than those licensed by the Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations, as required, by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

(d) The amendments to section 109 of the 1954 Act made by this section shall not affect the approval of exports contracted for prior to November 1, 1977, which are made within one year of the date of enactment of such amendments.

TITLE IV—NEGOTIATION OF FURTHER EXPORT CONTROLS

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ADDITIONAL REQUIREMENTS

Sec. 402.[18] (a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: *Provided,* That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 131 of the 1954 Act, and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: *And provided further,* That no source or special nuclear material shall

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[16] Subsec. (a) amended sec. 109 of the 1954 act. For text of sec. 109, see page 467.

[17] 42 U.S.C. 2139a. The procedures referred to in subsection (c) were issued on June 1, 1978. For text, see vol. III, page 645.

[18] 42 U.S.C. 2153a. The procedures mentioned in the first proviso were issued June 1, 1978. For text, see vol. III, page 645.

be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after the date of enactment of this Act, entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.

(b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (except an agreement for cooperation pursuant to subsection 91c., 144b., or 144c. of the 1954 Act) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term "major critical component" means any component part or group of component parts which the President determines to be essential to the operation of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

PEACEFUL NUCLEAR ACTIVITIES

Sec. 403.[19] The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

(a) No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that—

(1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosive devices for any purpose, except as permitted by Article V, the Treaty;

(2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under the control of any non-nuclear-weapon state;

(3) adequate physical security measures will be established and maintained by any nation or group of nations on all of its nuclear activities;

(4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and

[19] 42 U.S.C. 2153b.

(5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.

(b)(1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in paragraph aa. (2) of section 11 of the 1954 Act) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than the host country to sensitive nuclear technology associated with such facilities.

(2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.

(c) Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.

(d) Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

RENEGOTIATION OF AGREEMENTS FOR COOPERATION

Sec. 404.[20] (a) The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on the date of enactment of this Act, or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreements under the 1954 Act. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 127 of

[20] 42 U.S.C. 2153c.

the 1954 Act with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on the date of enactment of this Act with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 123 a. of the 1954 Act, the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in the 1954 Act shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on the date of enactment of this Act.

(b) The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 123 a. of the 1954 Act and the export policy goals set forth in section 401 to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies which are not already being applied as export criteria to be enacted as additional export criteria.

(c) If the President proposes enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.

(d) If the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of the United States non-proliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to subsection 130 b. through g. of the 1954 Act.

AUTHORITY TO CONTINUE AGREEMENTS

Sec. 405.[21] (a) The amendments to section 123 of the 1954 Act made by this Act shall not affect the authority to continue coopera-

[21] 42 U.S.C. 2153d.

tion pursuant to agreements for cooperation entered into prior to the date of enactment of this Act.

Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement for Cooperation.

REVIEW

Sec. 406.[22] No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in the 1954 Act.

PROTECTION OF THE ENVIRONMENT

Sec. 407.[23] The President shall endeavor to provide in any agreement entered into pursuant to section 123 of the 1954 Act for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

TITLE V—UNITED STATES ASSISTANCE TO DEVELOPING COUNTRIES

POLICY; REPORT

Sec. 501.[24] The United States shall endeavor to cooperate with other nations, international institutions, and private organizations in establishing programs to assist in the development of non-nuclear energy resources, to cooperate with both developing and industrialized nations in protecting the international environment from contamination arising from both nuclear and non-nuclear energy activities, and shall seek to cooperate with and aid developing countries in meeting their energy needs through the development of such resources and the application of non-nuclear technologies consistent with the economic factors, the material resources of those countries, and environmental protection. The United States shall additionally seek to encourage other industrialized nations and groups of nations to make commitments for similar cooperation and aid to developing countries. The President shall report annually to Congress on the level of other nations' and groups of nations' commitments under such program and the relation of any such commitments to United States efforts under this title. In cooperating with and providing such assistance to developing countries, the United States shall give priority to parties to the Treaty.

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[22] 42 U.S.C. 2160a.

[23] 42 U.S.C. 2153e. Sec. 1913 of Public Law 95–630 (92 Stat. 3727) provides: "Sec. 1913. No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled 'Protection of the Environment' which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities."

[24] 22 U.S.C. 3261.

PROGRAMS

Sec. 502. (a) The United States shall initiate a program, consistent with the aims of section 501, to cooperate with developing countries for the purpose of—

(1) meeting the energy needs required for the development of such countries;

(2) reducing the dependence of such countries on petroleum fuels, with emphasis given to utilizing solar and other renewable energy resources; and

(3) expanding the energy alternatives available to such countries.

(b) Such program shall include cooperation in evaluating the energy alternatives of developing countries, facilitating international trade in energy commodities, developing energy resources, and applying suitable energy technologies. The program shall include both general and country-specific energy assessments and cooperative projects in resource exploration and production, training, research and development.

(c) As an integral part of such program, the Department of Energy, under the general policy guidance of the Department of State and in cooperation with the Agency for International Development and other Federal agencies as appropriate, shall initiate, as soon as practicable, a program for the exchange of United States scientists, technicians, and energy experts with those of developing countries to implement the purposes of this section.

(d) For the purposes of carrying out this section, there is authorized to be appropriated such sums as are contained in annual authorization Acts for the Department of Energy, including such sums which have been authorized for such purposes under previous legislation.

(e) Under the direction of the President, the Secretary of State shall ensure the coordination of the activities authorized by this title with other related activities of the United States conducted abroad, including the programs authorized by sections 103(c), 106(a)(2), and 119 of the Foreign Assistance Act of 1961.[25]

REPORT

Sec. 503. Not later than twelve months after the date of enactment of this Act, the President shall report to the Congress on the feasibility of expanding the cooperative activities established pursuant to section 502(c) into an international cooperative effort to include a scientific peace corps designed to encourage large numbers of technically trained volunteers to live and work in developing countries for varying periods of time for the purpose of engaging in projects to aid in meeting the energy needs of such countries through the search for and utilization of indigenous energy resources and the application of suitable technology, including the widespread utilization of renewable and unconventional energy technologies. Such report shall also include a discussion of other mechanisms to conduct a coordinated international effort to devel-

[25] For text, see vol. I, pages 18 and 25. Sec. 119 of the FA Act, 1961 was repealed.

op, demonstrate, and encourage the utilization of such technologies in developing countries.

TITLE VI—EXECUTIVE REPORTING

REPORTS OF THE PRESIDENT

Sec. 601.[26] (a) The President shall review all activities of Government departments and agencies relating to preventing proliferation and shall make a report to Congress in January of 1979 and annually in January of each year thereafter on the Government's efforts to prevent proliferation. This report shall include but not be limited to—

(1) a description of the progress made toward—

(A) negotiating the initiatives contemplated in sections 104 and 105 of this Act;

(B) negotiating the international arrangements or other mutual undertakings contemplated in section 403 of this Act;

(C) encouraging non-nuclear-weapon states that are not party to the Treaty to adhere to the Treaty or, pending such adherence, to enter into comparable agreements with respect to safeguards and to foreswear the development of any nuclear explosive devices, and discouraging nuclear exports to non-nuclear-weapon states which have not taken such steps;

(D) strengthening the safeguards of the IAEA as contemplated in section 201 of this Act; and

(E) renegotiating agreements for cooperation as contemplated in section 404(a) of this Act;

(2) an assessment of the impact of the progress described in paragraph (1) on the non-proliferation policy of the United States; an explanation of the precise reasons why progress has not been made on any particular point and recommendations with respect to appropriate measures to encourage progress; and a statement of what legislative modifications, if any, are necessary in his judgment to achieve the non-proliferation policy of the United States;

(3) a determination as to which non-nuclear-weapon states with which the United States has an agreement for cooperation in effect or under negotiation, if any, have—

(A) detonated a nuclear device; or

(B) refused to accept the safeguards of the IAEA on all of their peaceful nuclear activities; or

(C) refused to give specific assurances that they will not manufacture or otherwise acquire any nuclear explosive device; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices;

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[26] 22 U.S.C. 3281.

(4) an assessment of whether any of the policies set forth in this Act have, on balance, been counterproductive from the standpoint of preventing proliferation; and

(5) a description of the progress made toward establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses in order to enhance the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies.

(b) In the first report required by this section, the President shall analyze each civil agreement for cooperation negotiated pursuant to section 123 of the 1954 Act, and shall discuss the scope and adequacy of the requirements and obligations relating to safeguards and other controls therein.

ADDITIONAL REPORTS

Sec. 602.[27] (a) The annual reports to the Congress by the Commission and the Department of Energy which are otherwise required by law shall also include views and recommendations regarding the policies and actions of the United States to prevent proliferation which are the statutory responsibility of those agencies. The Department's report shall include a detailed analysis of the proliferation implications of advanced enrichment and reprocessing techniques, advanced reactors, and alternative nuclear fuel cycles. This part of the report shall include a comprehensive version which includes any relevant classified information and a summary unclassified version.

(b) The reporting requirements of this title are in addition to and not in lieu of any other reporting requirements under applicable law.

(c) The Department of State, the Arms Control and Disarmament Agency, the Department of Commerce, the Department of Energy, and the Commission shall keep the Committees on Foreign Relations and Governmental Affairs of the Senate and the Committee on International Relations of the House of Representatives fully and currently informed with respect to their activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, and with respect to the current activities of foreign nations which are of significance from the proliferation standpoint.

(d) Any classified portions of the reports required by this Act shall be submitted to the Senate Foreign Relations Committee and the House International Relations Committee.

(e) Three years after enactment of this Act, the Comptroller General shall complete a study and report to the Congress on the implementation and impact of this Act on the nuclear non-proliferation policies, purposes, and objectives of this Act. The Secretaries of State, Energy, Defense, and Commerce and the Commission and the Director shall cooperate with the Comptroller General in the conduct of the study. The report shall contain such recommendations as the Comptroller General deems necessary to support the

[27] 22 U.S.C. 3282.

nuclear non-proliferation policies, purposes, and objectives of this Act.

SAVING CLAUSE

Sec. 603.[28] (a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to section 91 c., 144 b., or 144 c. of the 1954 Act or arrangements pursuant thereto as it was in effect immediately prior to the date of enactment of this Act.

(c) Except where otherwise provided, the provisions of this Act shall take effect immediately upon enactment regardless of any requirement for the promulgation of regulations to implement such provisions.

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[28] 42 U.S.C. 2153f.

b. Executive Order 12058, May 11, 1978, 43 F.R. 20947

FUNCTIONS RELATING TO NUCLEAR NON-PROLIFERATION

By virtue of the authority vested in me by the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 120, 22 U.S.C. 3201) and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. Department of Energy. The following functions vested in the President by the Nuclear Non-Proliferation Act of 1978 (92 Stat. 120, 22 U.S.C. 3201), hereinafter referred to as the Act, and by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), hereinafter referred to as the 1954 Act, are delegated or assigned to the Secretary of Energy:

(a) That function vested by Section 402(b) of the Act (92 Stat. 145, 42 U.S.C. 2153a).

(b) Those functions vested by Sections 131a(2)(G), 131b(1), and 131f(2) of the 1954 Act (92 Stat. 127, 42 U.S.C. 2160).

(c) That function vested by Section 131f(1)(A)(ii) of the 1954 Act to the extent it relates to the preparation of a detailed generic plan.

Sec. 2. Department of State. The Secretary of State shall be responsible for performing the following functions vested in the President:

(a) Those functions vested by Sections 104(a), 104(d), 105, 403, 404, 407, and 501 of the Act (92 Stat. 122, 123, 146, 147, and 22 U.S.C. 3223(a), 3223(d), 3224, and 42 U.S.C. 2153b, 2153c, 2153e, and 22 U.S.C. 3261).

(b) That function vested by Section 128a(2) of the 1954 Act (92 Stat. 137, 42 U.S.C. 2157(a)(2)).

(c) That function vested by Section 601 of the Act to the extent it relates to the preparation of an annual report.

(d) The preparation of timely information and recommendations related to the President's functions vested by Sections 126, 128b, and 129 of the 1954 Act (92 Stat. 131, 137, and 138, 42 U.S.C. 2155, 2157, and 2158).

(e) That function vested by Section 131c of the 1954 Act (92 Stat. 129, 42 U.S.C. 2160(c)); except that, the Secretary shall not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President.

Sec. 3. Department of Commerce. The Secretary of Commerce shall be responsible for performing the function vested in the President by Section 309(c) of the Act (92 Stat. 141, 42 U.S.C. 2139a).

Sec. 4. Coordination. In performing the functions assigned to them by this Order, the Secretary of Energy and the Secretary of

State shall consult and coordinate their actions with each other and with the heads of other concerned agencies.

Sec. 5. General Provisions. (a) Executive Order No. 11902 of February 2, 1976, entitled "Procedures for an Export Licensing Policy as to Nuclear Materials and Equipment," is revoked.

(b) The performance of functions under either the Act or the 1954 Act shall not be delayed pending the development of procedures, even though as many as 120 days are allowed for establishing them. Except where it would be inconsistent to do so, such functions shall be carried out in accordance with procedures similar to those in effect immediately prior to the effective date of the Act.

c. Export of Nuclear Material

(1) U.S. Exports of Low-Enriched Uranium Fuel

Public Law 96–280 [S.J. Res. 89], 94 Stat. 550, approved June 18, 1980

JOINT RESOLUTION Permitting the supply of additional low enriched uranium fuel under international agreements for cooperation in the civil uses of nuclear energy, and for other purposes.

Whereas the Nuclear Non-Proliferation Act of 1978 urges the United States to provide a reliable supply of nuclear fuel to those nations which adhere to policies designed to prevent the proliferation of nuclear weapons; and

Whereas the United States, in order to achieve the goals of that Act should be able to continue to supply low-enriched uranium fuel to nations that have entered into good faith negotiations as called for in section 404(a) of the Act; and

Whereas pending such negotiations, limitations now contained in certain agreements for cooperation on the amount of low-enriched uranium which may be supplied thereunder are insufficient to permit adequate assurance of supplies: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Limits contained in agreements for cooperation on the amount of low-enriched uranium which may be transferred by or exported from the United States pursuant thereto shall not be construed to preclude transfer or export of amounts of low-enriched uranium in excess of such limits to nations which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

Sec. 2. (a) The terms used in this joint resolution shall have the meanings ascribed to them by the Atomic Energy Act of 1954 and by the Nuclear Non-Proliferation Act of 1978.

(b) The term "low-enriched uranium" means uranium enriched to less than 20 per centum in the isotope 235.

(2) Executive Order 12055, April 27, 1978, 43 F.R. 18157

EXPORT OF SPECIAL NUCLEAR MATERIAL TO INDIA

By virtue of the authority vested in me as President by the Constitution of the United States of America and by Section 126b(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2155), as amended by Section 304(a) of the Nuclear Non-Proliferation Act of 1978 (Public Law 95–242, 92 Stat. 131), and having determined that withholding the export proposed pursuant to Nuclear Regulatory Commission export license application XSNM–1060 would be seriously prejudicial to the achievement of the United States non-proliferation objectives, that export to India is authorized; however, such export shall not occur for a period of 60 days as defined by Section 130g of the Atomic Energy Act of 1954, as amended.

(3) Executive Order 12218, June 19, 1980, 45 F.R. 41625

EXPORT OF SPECIAL NUCLEAR MATERIAL AND COMPONENTS TO INDIA

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126b. (2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(b)(2)), and having determined that withholding the exports proposed pursuant to Nuclear Regulatory Commission export license applications XSNM-1379, XSNM-1569, XCOM-0240, XCOM-0250, XCOM-0376, XCOM-0381 and XCOM-0395, would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security, those exports to India are authorized; however, such exports shall not occur for a period of 60 days as defined by Section 130 g. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2159(g)).

d. Department of Energy Act of 1978—Civilian Applications

Partial text of Public Law 95–238 [S. 1340], 92 Stat. 47 at 59 and 75, approved February 25, 1978

AN ACT To authorize appropriations to the Department of Energy, for energy research, development, and demonstration, and related programs in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Non-Nuclear Energy Research and Development Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Energy Act of 1978—Civilian Applications".

* * * * * * *

Sec. 203.[1] The Secretary of Energy, in cooperation with the Secretary of State, shall report to the Committees on Science and Technology and International Relations of the House of Representatives and the Committees on Energy and Natural Resources and Foreign Relations of the Senate, within six months after the date of the enactment of this Act, on the effects of the April 20, 1977, message from the President of the United States, "Establishing for the United States a Strong and Effective Nuclear Non-Proliferation Policy", on nuclear research and development cooperative agreements. This report shall include impacts of the message and related initiatives through the promulgation, repeal, or modification of Executive orders, Presidential proclamation, treaties, other international agreements, and other pertinent documents of the President, the Executive Office of the President, the administrative agencies, and the departments, on cooperation between the United States and any other nation in the research, development, demonstration, and commercialization of all nuclear fission and nuclear fusion technologies. After the initial report, the Administrator shall report to such Committees on each subsequent major related initiative.

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Sec. 208.[2] (a) The Secretary of Energy shall—

(1) * * *

(2) * * *

(3) initiate and conduct a study involving the prospects for applications of solar photovoltaic energy systems for power generation in foreign countries, particularly lesser developed countries, and the potential for the exportation of these energy systems. This study shall involve the cooperation of the De-

[1] 22 U.S.C. 2429 note.
[2] 42 U.S.C. 5556a.

partment of State and the Department of Commerce, as well as other Federal agencies which the Secretary of Energy deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of the enactment of this Act; and

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3. Nuclear Waste Policy Act of 1982

Partial text of Public Law 97-425 [H.R. 3809], 96 Stat. 2201, approved January 7, 1983

AN ACT To provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TECHNICAL ASSISTANCE TO NON-NUCLEAR WEAPON STATES IN THE FIELD OF SPENT FUEL STORAGE AND DISPOSAL

Sec. 223.[1] (a) It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b)(1) Within 90 days of enactment of this Act, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these

[1] 42 U.S.C. 10203.

fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) For the purposes of this subsection, the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C. 438).[2]

(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.

[2]For text, see Vol. III, page 38.

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4. Energy Policy and Conservation Act [1]

Partial text of Public Law 94-163 [S. 622], 89 Stat. 871, approved December 22, 1975, as amended by Public Law 95-619 [H.R. 5037], 92 Stat. 3206, approved November 9, 1978; Public Law 96-30 [S. 1371], 93 Stat. 80, approved June 30, 1979; Public Law 96-94 [H.R. 5506], 93 Stat. 720, approved October 31, 1979; Public Law 96-102 [S. 1030], 93 Stat. 749, approved November 5, 1979; Public Law 96-133 [S. 1871], 93 Stat. 1053, approved November 30, 1979; Public Law 97-5 [H.R. 2166], 95 Stat. 7, approved March 13, 1981; Public Law 97-50 [S. 1475], 95 Stat. 957, approved September 30, 1981; Public Law 97-163 (S. 1937], 96 Stat. 24, approved April 1, 1982; Public Law 97-190 [S. 2575], 96 Stat. 106, approved June 1, 1982; Public Law 97-217 [S. 2651], 96 Stat. 196, approved July 19, 1982; and by Public Law 97-229 [S. 2332], 96 Stat. 248, approved August 3, 1982

AN ACT To increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Policy and Conservation Act".

* * * * * * *

STATEMENT OF PURPOSES

Sec. 2. The purposes of this Act are—

(1) to grant specific standby authority to the President, subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) to increase the supply of fossil fuels in the United States, through price incentives and production requirements;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources; and

(7) to provide a means for verification of energy data to assure the reliability of energy data.

* * * * * * *

[1] 42 U.S.C. 6201-6422.

DEFINITIONS

Sec. 3. As used in this Act:

(1) The term "Secretary" means the Secretary of Energy.[2]

(2) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company and (C) the government and any agency of the United States or any State or politicial subdivision thereof.

(3) The term "petroleum product" means crude oil residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

(4) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(5) The term "United States" when used in the geographical sense means all of the States and the Outer Continental Shelf.

(6) The term "Outer Continental Shelf" has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(7) The term "international energy program" means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including (A) the annex entitled "Emergency Reserves",[3] (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement.

(8) The term "severe energy supply interruption" means a national energy supply shortage which the President determines—

(A) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(B) may cause major adverse impact on national safety or the national economy; and

(C) results, or is likely to result, from an interruption in the supply of imported petroleum products, or from sabotage or an act of God.

* * * * * * *

DOMESTIC USE OF ENERGY SUPPLIES AND RELATED MATERIALS AND EQUIPMENT

Sec. 103. (a) The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this Act, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b)(1) The President shall exercise the authority provided for in subsection (a) to promulgate a rule prohibiting the export of crude

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[2] The reference to the Secretary of Energy was substituted in lieu of a reference to the Administrator of the Federal Energy Administration by sec. 691(a) of Public Law 95-619 (92 Stat. 3288).

[3] For text, see vol. III, page 607.

oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and purposes of this Act.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this Act.

(c) In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [4] (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2)(C) of such Act), impose such restrictions as specified in any rule under subsection (a) on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

(d) Any finding by the President pursuant to subsection (a) or (b) and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e)(1) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c), the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this Act, to any violation of such restrictions.

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[4] 50 U.S.C. App. 2401 note. This reference to the 1979 act was changed from a reference to the Export Administration Act of 1969 (which expired on Sept. 30, 1979) by sec. 22(b) of Public Law 96-72 (93 Stat. 535).

(f) The President shall submit quarterly reports to the Congress concerning the administration of this section and any findings made pursuant to subsection (a) or (b).

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PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

INTERNATIONAL OIL ALLOCATION

Sec. 251. (a) The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2), such a rule shall remain in effect until amended or rescinded by the President.

(b)(1) No rule under subsection (a) may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

(2) No rule under subsection (b) may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c)(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973.[5]

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Neither section 103 of this Act nor section 28(u) of the Mineral Leasing Act of 1920[6] shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

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[5] 15 U.S.C. 753.
[6] 30 U.S.C. 185.

(e)[7] No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 252(l)(1), is in effect; and

(2) the allocation of available oil referred to in chapter III of the international energy program has been activated pursuant to chapter IV of such program.

INTERNATIONAL VOLUNTARY AGREEMENTS[8]

Sec. 252. (a) Effective 90 days after the date of enactment of this Act, the requirements of this section shall be the sole procedures applicable to—

(1) the development or carrying out of voluntary agreements and plans of action to implement the allocation and information provisions of the international energy program, and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) The Secretary,[9] with the approval of the Attorney General after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the allocation and information provisions of the international energy program.

(c) The standards and procedures prescribed under subsection (b) shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) or (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreement or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary,[7] the Secretary of State, and the Attorney General, may determine

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[7] Subsec. (e) was added by sec. 2(b)(1) of the Energy Emergency Preparedness Act of 1982 (Public Law 97-229; 96 Stat. 248).

[8] Sec. 3. of Public Law 96-133 (93 Stat. 1053) requires the Secretary of Energy to submit a report to the appropriate committees of Congress by Apr. 2, 1980, concerning the actions taken by the Secretary of Energy, Secretary of State, the Attorney General, and the Chairman of the Federal Trade Commission to carry out the provisions of this section. See page 556 for complete requirements of the report.

[9] The reference to the "Secretary" was substituted in lieu of a reference to the "Administrator" by sec. 691(a) of Public Law 95-619 (92 Stat. 3288).

that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or that attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of action under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary[9] may impose.

(3) A full and complete record and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary,[9] and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5, United States Code; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on ground other than the grounds specified in section 552 (b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary,[7] and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.[10]

(d)(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement

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[10] This sentence was added by sec. 2 of Public Law 96-133 (93 Stat. 1053).

or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary,[9] shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (k).

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary,[9] subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3). Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e).

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

(e)(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of voluntary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary,[7] shall promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promulgated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act; and wherever any such law refers

to "the purposes of this Act" or like terms, the reference shall be understood to include this section.

(f)(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products (provided that such actions were not taken for the purpose of injuring competition) that—

(A) such actions were taken—

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this Act or subsequent to its expiration or repeal.

(h) Upon the expiration of the 90-day period which begins on the date of enactment of this Act, the provisions of sections 708 and 708A (other than 708A(o)) of the Defense Production Act of 1950[11] shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this Act or under the Emergency Petroleum Allocation Act of 1973.[12] For purposes of section 708A(o) of the Defense Production Act of 1950, the effective date of the provisions of this Act which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after the date of enactment of this Act.

(i) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every 6 months, a report on the impact on competition and on small business of actions authorized by this section.

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[11] 50 U.S.C. App. 2158a.
[12] 42 U.S.C. 751 note.

(j) The authority granted by this section shall terminate at midnight December 31, 1983.[13]

(k) In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(l) As used in this section and section 254:

(1) The term "international energy supply emergency" means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term "allocation and information provisions of the international energy program" means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such program.

(m) [14] The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement chapters III, IV, and V of the international energy program.

ADVISORY COMMITTEES

Sec. 253. (a) To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974[15] (whether or not such Act or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meet-

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[13] This date was extended to Dec. 31, 1983 by sec. 2(a) of Public Law 97-229 (96 Stat. 248). Prior to this action, Public Law 96-30 (93 Stat. 80) extended the authority from June 30, 1979 to Oct. 31, 1979. The date was further extended by Public Law 96-94 (93 Stat. 720) to Nov. 30, 1979, by Public Law 96-133 (93 Stat. 1058) to Mar. 15, 1981, by Public Law 97-5 (95 Stat. 7) to Sept. 30, 1981, by Public Law 97-50 (95 Stat. 957) to Apr. 1, 1982, by Public Law 97-163 (96 Stat. 24) to June 1, 1982, by Public Law 97-190 (96 Stat. 106) to July 1, 1982, and by Public Law 97-217 (96 Stat. 196) to Aug. 1, 1982.

[14] Subsec. (m) was added by sec. 2(b)(2) of the Energy Emergency Preparedness Act of 1982 (Public Law 97-229; 96 Stat. 248).

[15] 15 U.S.C. 776.

ing and may have an official representative attend and participate in any such meeting.

(b) A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, United States Code, except that matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552 (b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c).

(c) The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary,[9] may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,[16]

(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974,[11]

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b);

if the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5, United States Code. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

EXCHANGE OF INFORMATION

Sec. 254. (a)(1) Except as provided in subsections (b) and (c), the Secretary,[9] after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552 (b)(9) or (b)(4) of title 5, United States Code, applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

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[16] 5 U.S.C. App. 1.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency if otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3)(A) Within 90 days after the date of enactment of this Act, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying, paragraph (2)(B)(ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary[7] to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary[7] has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) For the purposes of carrying out the obligations of the United States under this international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act and the Federal Energy Ad-

ministration Act of 1974 respectfully, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974;

(2) section 14(b) of the Federal Energy Administration Act of 1974;

(3) section 12 of the Export Administration Act of 1979;[17]

(4) section 9 of title 13, United States Code;

(5) section 1 of the Act of January 27, 1938 (15 U.S.C. 176(a)); and

(6) section 1905 of title 18, United States Code.

RELATIONSHIP OF THIS TITLE TO THE INTERNATIONAL ENERGY AGREEMENT

Sec. 255. The purpose of the Congress in enacting this title is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this title may, to the extent authorized by this title, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this title shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

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PART C—ENERGY EMERGENCY PREPAREDNESS

CONGRESSIONAL FINDINGS, POLICY, AND PURPOSE

Sec. 271.[18] (a) FINDINGS.—The Congress finds that—

(1) a shortage of petroleum products caused by reductions in imports of petroleum products may occur at any time;

(2) such a shortage may be sufficiently large to cause severe economic dislocations and hardships, or constitute a serious threat to public health, safety, and welfare; and

(3) prior to the occurrence of such a shortage, the Federal Government has a responsibility to be prepared to mitigate the adverse impacts of such a shortage as a supplement to reliance on free market pricing and allocation of available petroleum product supplies.

(b) POLICY.—The Congress declares that it shall be the policy of the United States that the Federal Government shall be prepared prior to any shortage of petroleum products to respond to energy emergencies, pursuant to authorities under provisions of law other

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[17] For text, see page 263. Amended by sec. 22(b) of Public Law 96-72 (93 Stat. 535); this was formerly a reference to sec. 7 of the Export Administration Act of 1969.

[18] Secs. 271 and 272 were added by sec. 3(a) of the Energy Emergency Preparedness Act of 1982 (Public Law 97-229; 96 Stat. 248).

than this part, as a supplement to reliance on the free market to mitigate the adverse impacts of a shortage of petroleum products on public health, safety, and welfare.

(c) PURPOSE.—The purpose of this part is to carry out the policy in subsection (b) by providing for the preparation of comprehensive energy emergency response procedures to be available for use by the President under authorities contained in any provision of law other than this part.

PREPARATION FOR PETROLEUM SUPPLY INTERRUPTIONS

Sec. 272.[18] (a) DESCRIPTION OF AVAILABLE LEGAL AUTHORITIES.—(1) The President shall submit to the Congress no later than November 15, 1982, a memorandum of law which describes the nature and extent of the authorities available to the President under existing law to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States.

(2) The memorandum of law required by paragraph (1) shall be prepared by the Attorney General, in consultation with the Secretary of Energy.

(3) The memorandum of law submitted to the Congress pursuant to this subsection shall—

(A) include the following subjects—

(i) activities of the United States in support of the international energy program and the December 10, 1981, International Energy Agency agreement entitled "Decision on Preparation for Future Supply Disruptions" including—

(I) the National Emergency Sharing Organization;

(II) emergency sharing systems; and

(III) the supply right project;

(ii) activities of the United States pursuant to its energy emergency preparedness obligations to the North Atlantic Treaty Organization;

(iii) development and use of the Strategic Petroleum Reserve;

(iv) Government incentives to encourage private petroleum product stocks;

(v) reactivation of the following Executive Manpower Reserves:

(I) the Emergency Electric Power Reserve;

(II) the Emergency Petroleum and Gas Reserve; and

(III) the Emergency Solid Fuels Reserve;

(vi) energy emergency response management in coordination with State and local governments; and

(vii) emergency public information activities; and

(B) distinguish among—

(i) situations involving limited or general war, international tensions that threaten national security, and other Presidentially declared emergencies;

(ii) events resulting in activation of the international energy program; and

(iii) events or situations less severe than those described in clauses (i) and (ii).

(b) COMPREHENSIVE ENERGY EMERGENCY RESPONSE PROCEDURES.—(1) Not later than December 31, 1982, the President shall submit to the Congress comprehensive energy emergency response procedures for implementation, in whole or in part, of the authorities described under subsection (a).

(2) The comprehensive energy emergency response procedures shall—

(A) describe the various options the President would consider using to implement the authorities described in the memorandum of law submitted under subsection (a) to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States, including a description of the likely sequence in which such options would be taken;

(B) specify how appropriate governmental actions in response to international and domestic energy shortages would be selected and implemented under such options, particularly which official or governmental entity would select and implement such actions, and what procedures would be used in doing so; and

(C) recommend any additional statutory authority the President considers necessary to respond to a severe energy supply interruption or other substantial reduction in the amount of petroleum products available to the United States.

(c) DISCLAIMERS.—(1) Nothing in this part, or in the comprehensive energy emergency response procedures submitted pursuant to subsection (b), shall—

(A) limit the authority of the President under any provision of law to respond to a reduction in the amount of petroleum products available to the United States; or

(B) grant any authority to the President to respond to a reduction in the amount of petroleum products available to the United States.

(2) No State law or State program in effect on the date of the enactment of this part, or which may become effective thereafter, shall be construed to be superseded by any provision of this part.

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TITLE V—GENERAL PROVISIONS

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[Sections 505 and 506 amend The Energy Supply and Environmental Coordination Act of 1974]

PROHIBITED ACTS

Sec. 524. It shall be unlawful for any person—

(1) to violate any provision of title I or title II of this Act or this title (other than any provision of such titles which amend another law),

(2) to violate any rule, regulation, or order issued pursuant to any such provision or any provision of section 383 of this Act; or

(3) to fail to comply with any provision prescribed in, or pursuant to, an energy conservation contingency plan which is in effect.

ENFORCEMENT

Sec. 525. (a) Whoever violates section 524 shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) Whoever willfully violates section 524 shall be fined not more than $10,000 for each violation.

(c) Any person who knowingly and willfully violates section 524 with respect to the sale, offer of sale, or distribution in commerce of a product or commodity after having been subjected to a civil penalty for a prior violation of section 524 with respect to the sale, offer of sale, or distribution in commerce of such product or commodity shall be fined not more than $50,000 or imprisoned not more than 6 months, or both.

(d) Whenever it appears to any officer or agency of the United States in whom is vested, or to whom is delegated, authority under this Act that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 524, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any rule, regulation, or order described in section 524.

(e)(1) Any person suffering legal wrong because of any act or practice arising out of any violation of any provision of this Act described in paragraph (2), may bring an action in an appropriate district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

(2) The provisions of this Act referred to in paragraph (1) are as follows:

(A) Section 202 (relating to energy conservation plans).

(B) Section 251 (relating to international oil allocation).

(C) Section 252 (relating to international voluntary agreements).

(D) Section 253 (relating to advisory committees).

(E) Section 254 (relating to international exchange of information).

(F) Section 521 (relating to prohibition on certain actions).

EFFECT ON OTHER LAWS

Sec. 526. No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of title I or II of this Act (other than any provision of such title which amends another law)

or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with such provision, rule, regulation, or order.

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EXPIRATION

Sec. 531. Except as otherwise provided in title I or title II, all authority under any provision of title I or title II (other than a provision of either such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, June 30, 1985, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1985.

PART C—CONGRESSIONAL REVIEW

PROCEDURE FOR CONGRESSIONAL REVIEW OF PRESIDENTIAL REQUESTS TO IMPLEMENT CERTAIN AUTHORITIES

Sec. 551. (a) For purposes of this section, the term "energy action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(c)(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

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(f)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution to the matter after the resolving clause of which is as follows: "That the ..... does not object to the energy action numbered ..... submitted to the Congress on ....., 19....", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: "That the ..... does not favor the energy action numbered ..... transmitted to Congress on ....., 19.....", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same such action, or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

EXPEDITED PROCEDURE FOR CONGRESSIONAL CONSIDERATION OF CERTAIN AUTHORITIES

Sec. 552. (a) Any contingency plan transmitted to the Congress pursuant to section 201(a)(1) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(b)(1)[19] No such energy conservation contingency plan may be considered approved for purposes of section 201(b) of this Act unless between the date of transmittal and the end of the first

[19] Sec. 103(b)(2)(A) of Public Law 96–102 (93 Stat. 753) added the paragraph designation "(1)", added the words "energy conservation" to par. (1), and inserted a new par. (2).

period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A).

(2)[16] (A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 201 (d) only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the 30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) is passed by each House of the Congress and thereafter becomes law.

(c) For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-calendar-day period involved.[20]

(d)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2)(A) For purposes of applying this section with respect to any energy conservation contingency plan,[21] the term "resolution" means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: "That the ..... approves the energy conservation,[22] contingency plan numbered ..... submitted to the Congress on ....., 19....", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation [22] contingency plan.

(B)[21] For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section 201(d)(2)(B)), the term "resolution" means only a joint resolution

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[20] The words "calendar-day period involved" were substituted in lieu of the words "60-calendar-day period" by sec. 103(b)(2)(B) of Public Law 90-102 (93 Stat. 753).

[21] Sec. 103(b)(2)(C) of Public Law 96-102 (93 Stat. 753) added the subparagraph designation "(A)", amended the words to this point in subpar. (A), and added a new subpar. (B).

[22] The words "energy conservation" were added by sec. 105(a)(4) of Public Law 96-102 (93 Stat. 756).

described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress ....., 19.....", the blank spaces therein appropriately filled.

(ii) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress ....., 19.....", the blank spaces therein appropriately filled.

(3) A resolution once introduced with respect to a contingency plan shall immediately be referred to a committee (and all resolutions with respect to the same contingency plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan,[23] it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A),[24] an amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same contingency plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and

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[23] The words to this point beginning with "in the case of * * *" were added by sec. 103(b)(2)(D) of Public Law 96-102 (93 Stat. 754).

[24] The words to this point in this sentence were added by sec. 103(b)(2) (E) and (F) of Public Law 96-102 (93 Stat. 754).

shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B),[24] an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(7)[25] With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

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[25] Par. (7) was added by sec. 103(b)(2)(G) of Public Law 96-102 (93 Stat. 754).

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing contingency plan, then the following procedure applies:

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with respect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

5. Extension of the International Energy Program

Public Law 96-133 [S. 1871], 93 Stat. 1053, approved November 30, 1979

AN ACT To amend the Energy Policy and Conservation Act to extend certain authorities relating to the international energy program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXTENSION

Section 1. * * *[1]

TRANSCRIPTS

Sec. 2. * * *[2]

REPORT

Sec. 3.[3] The Secretary of Energy, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Trade Commission, shall prepare and submit to the appropriate committees of Congress a report concerning the actions taken by them to carry out the provisions of section 252 of the Energy Policy and Conservation Act. Such report shall examine and discuss—

(1) the extent to which all, or part, of any meeting held in accordance with section 252(c) of such Act to carry out a voluntary agreement or to develop or carry out a plan of action should be open to interested persons in furtherance of the provisions of section 252(c)(1)(A) of such Act;

(2) the policies and procedures followed by the appropriate Federal agencies in reviewing and making public or withholding from the public all, or part, of any transcript of any meeting held to develop or carry out a voluntary agreement or plan of action under section 252 and in permitting persons, other than citizens of the United States, to review such transcripts prior to any public disclosure thereof;

(3) the extent to which the classification of all, or part, of such transcripts should be carried out by one agency;

(4) the adequacy of actions by the responsible Federal agencies in insuring that the standards and procedures required by section 252 are fully implemented and enforced, including the monitoring of the program concerning any anticompetitive effects, and the number of personnel, and the amount of funds, assigned by each such agency to carry out such standards and procedures;

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[1] Sec. 1 amends sec. 252(j) of the Energy Policy and Conservation Act by extending the authority of that section until Mar. 15, 1981. See page 542 for text.

[2] Sec. 2 amends sec. 252(c)(4) of the Energy Policy and Conservation Act. See page 539 for text.

[3] 42 U.S.C. 6272 note.

(5) the actions taken, or to be taken, to improve the reporting of energy supply data under the international energy program and to reconcile such reporting with similar reporting that is conducted by the Department of Energy;

(6) the actions taken, or planned, to improve the reporting required by section 252(i); and

(7) other actions under such section.

The Secretary of Energy shall transmit such report to such Committees within 120 days after the date of the enactment of this Act and shall make such report available to the public.

6. Energy Emergency Preparedness Act of 1982

Public Law 97-229 [S. 2332], 96 Stat. 248, approved August 3, 1982

AN ACT To amend the Energy Policy and Conservation Act to extend certain authorities relating to the International Energy Program, to provide for the Nation's energy emergency preparedness, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title

This Act may be cited as the "Energy Emergency Preparedness Act of 1982".

NOTE.—Sections 2-5 of this Act consist, for the most part, of amendments to the Energy Policy and Conservation Act. Portions of these amendments have been incorporated into the Act at the appropriate places (see page 534 for text).

Sec. 6.[1] Reports to Congress on Petroleum Supply Interruptions.

(a) IMPACT ANALYSIS.—(1) The Secretary of Energy shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during any substantial reduction in the amount of petroleum products available to the United States. In making such analysis, the Secretary of Energy may consult with the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and the heads of other appropriate Federal agencies. Such analysis shall—

(A) examine the equity and efficiency of such reliance,

(B) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

(C) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

(D) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the distribution of petroleum products.

Such analysis shall include projections of the effect of the petroleum supply reduction on the price of motor gasoline, home heating oil, and diesel fuel, and on Federal tax revenues, Federal royalty receipts, and State and local tax revenues.

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[1] 42 U.S.C. 6245 note.

(2) Within one year after the date of the enactment of this Act, the Secretary of Energy shall submit a report to the Congress and the President containing the analysis required by this subsection, including a detailed step-by-step description of the procedures by which the policies specified in paragraph (1)(C) would be accomplished in an emergency, along with such recommendations as the Secretary of Energy deems appropriate.

(b) STRATEGIC PETROLEUM RESERVE DRAWDOWN AND DISTRIBUTION REPORT.—The President shall prepare and transmit to the Congress, at the time he transmits the drawdown plan pursuant to section 4(c), a report[2] containing—

(1) a description of the foreseeable situations (including selective and general embargoes, sabotage, war, act of God, or accident) which could result in a severe energy supply interruption or obligations of the United States arising under the international energy program necessitating distributions from the Strategic Petroleum Reserve, and

(2) a description of the strategy or alternative strategies of distribution which could reasonably be used to respond to each situation described under paragraph (1), together with the theory and justification underlying each such strategy.

The description of each strategy under paragraph (2) shall include an explanation of the methods which would likely be used to determine the price and distribution of petroleum products from the Reserve in any such distribution, and an explanatation of the disposition of revenues arising from sales of any such petroleum products under the strategy.

(c) REGIONAL RESERVE REPORT.—The President or his delegate shall submit to the Congress no later than December 31, 1982, a report regarding the actions taken to comply with the provisions of section 157 of the Energy Policy and Conservation Act (42 U.S.C. 6237). Such report shall include an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves, including—

(1) an assessment of the ability to transport petroleum products to refiners, distributors, and end users within the regions specified in section 157(a) of such Act;

(2) the comparative costs of creating and operating Regional Petroleum Reserves for such regions as compared to the costs of continuing current plans for the Strategic Petroleum Reserve; and

(3) a list of potential sites for Regional Petroleum Reserves.

(d) STRATEGIC ALCOHOL FUEL RESERVE REPORT.—The Secretary of Energy shall, in consultation with the Secretary of Agriculture, prepare and transmit to the Congress no later than December 31, 1982, a study of the potential for establishing a Strategic Alcohol Fuel Reserve.

(e) MEANING OF TERMS.—As used in this section, the terms "international emergency program", "petroleum product", "Reserve", "severe energy supply interruption", and "Strategic Petroleum Reserve" have the meanings given such terms in sections 3 and 152 of the Energy Policy and Conservation Act (42 U.S.C. 6202 and 6232).

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[2] Such report was due on Dec. 1, 1982.

7. Executive Order 12083, September 27, 1978, 43 F.R. 44813

Energy Coordinating Committee

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the coordination of Federal energy policies, it is hereby ordered as follows:

1-1. Establishment of the Committee.

1-101. There is established an Energy Coordinating Committee, hereinafter referred to as the Committee.

1-102. The Committee shall be composed of the following, and such other members as the President may, from time to time, designate.

(a) The Secretary of Energy, who shall be the Chairman.
(b) The Secretary of State.
(c) The Secretary of the Treasury.
(d) The Secretary of Defense.
(e) The Attorney General.
(f) The Secretary of the Interior.
(g) The Secretary of Agriculture.
(h) The Secretary of Commerce.
(i) The Secretary of Labor.
(j) The Secretary of Health, Education, and Welfare.
(k) The Secretary of Housing and Urban Development.
(l) The Secretary of Transportation.
(m) The Special Representative for Trade Negotiations.
(n) The Director of the Office of Management and Budget.
(o) The Chairman of the Council of Economic Advisers.
(p) The Chairman of the Council on Environmental Quality.
(q) The Administrator of the Environmental Protection Agency.
(r) The Director of the Office of Science and Technology Policy.
(s) The Administrator of General Services.
(t) The Director of the National Science Foundation.
(u) The Assistant to the President for National Security Affairs.
(v) The Assistant to the President for Domestic Affairs and Policy.
(w) The Chairman of the Nuclear Regulatory Commission, who is invited to be a member.

1-2. Functions of the Committee.

1-201. The Committee shall ensure that there is communication and coordination among Executive agencies concerning energy policy and the management of energy resources.

1-202. The Committee shall, from time to time, develop and consider recommendations for improvements in the implementation of

Federal energy policies or the management of energy resources that involve two or more Executive agencies.

1-203. The functions of the Committee shall neither substitute for nor replace Executive Office of the President clearance, review, and decisionmaking procedures. Those procedures shall also be used for submitting to the President any of the conclusions or recommendations developed through the Committee's energy coordinating functions.

1-204. The Committee shall meet at the call of the Chairman.

1-3. Executive Council.

1-301. During periods when the Committee is not meeting, the functions of the Committee are delegated to an Executive Council. Meetings may be called by any regular member of the Council.

1-302. The Executive Council shall be composed of the following, and such others as may be appropriate due to the specific matters to be considered.

(a) The Chairman of the Committee, who shall be Chairman of the Executive Council.

(b) The Director of the Office of Management and Budget.

(c) The Chairman of the Council of Economic Advisers.

(d) The Assistant to the President for National Security Affairs.

(e) The Assistant to the President for Domestic Affairs and Policy.

1-4. Revocation of a Prior Order. Executive Order No. 11814, as amended which provided for an Energy Resource Council, is revoked.

8. Defense Production Act Amendments of 1975, As Amended

Partial text of Public Law 94-152 [S. 1537], 89 Stat. 810, approved December 16, 1975, as amended by Public Law 94-153 [H.R. 11027], 89 Stat. 822, approved December 16, 1975; and by Public Law 94-220 [H.J. Res. 784], 90 Stat. 195, approved February 7, 1976

AN ACT To amend the Defense Production Act of 1950, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Defense Production Act Amendments of 1975".

* * * * * * *

Sec. 3. Section 708 of the Defense Production Act of 1950[1] is amended to read as follows:

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"**Sec. 708A.** (a) Except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"(b) As used in this section—

"(1) The term 'international energy supply emergency' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

"(2) The term 'international agreement' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974.[2]

"(3) The term 'Administrator' means the Administrator of the Federal Energy Administration.

"(4) The term 'petroleum products' means—

"(A) crude oil,

"(B) natural gas liquids and other liquids produced in association with crude oil or natural gas,

"(C) refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and

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[1] 50 U.S.C. App. 2158.

[2] For text, see vol. III, page 587.

"(D) blending agents and additives used in conjunction with crude oil and refined petroleum products.

"(c) The requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or plans of action.

"(d)(1) To achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act,[3] and section 17 of the Federal Energy Administration Act of 1974,[4] whether or not such Acts or any provisions thereof expire or terminate during the term of this Act or of such committees, and, in all cases, such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

"(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 522 (b)(1) and (b)(3) of title 5, United States Code.

"(3) For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act of 1974[4] shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees (other than individuals employed pursuant to section 3109 of title 5, United States Code) established or utilized to advise the United States Government with respect to the development or implementation of any agreement or plan of action under the international agreement.

"(e) The Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of

[3] 5 U.S.C. App. I.
[4] 15 U.S.C. 776.

the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

"(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

"(1)(A) Meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

"(B) No meetings may be held to develop or implement a voluntary agreement or plan of action under this section, unless a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent.

"(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings.

"(3) A verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement, or with respect to meetings held or communications made to develop a voluntary agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a

meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552 (b)(1) and (b)(3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

* * * * * * *

"(j)(1) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

"(A) such act or omission to act was taken in good faith by that person—

"(i) in the course of developing a voluntary agreement under this section, or

"(ii) to carry out a voluntary agreement under this section; and

"(B) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

"(2) In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

* * * * * * *

"(l)(1) The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

"(2) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

"(m) The authorities contained in this section with respect to the executive agreement, commonly known as the Agreement on an International Energy Program dated November 18, 1974, and referred to in this section as the international energy agreement, shall not be construed in any way as advice and consent, ratifica-

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tion, endorsement, or any other form of congressional approval of the specific terms of such executive agreement or any related annex, protocol, amendment, modification, or other agreement which has been or may in the future be entered into.

* * * * * * *

"(o) If S. 622, Ninety-fourth Congress (the Energy Policy and Conservation Act) is enacted[5] then (effective on the effective date of the provisions of S. 622 which relate to international voluntary agreements to carry out the International Energy Program) this section and section 708 shall not be applicable to (1) any voluntary agreement or plan of action developed or implemented to carry out obligations of the United States under the international agreement, or (2) any voluntary agreement or plan of action which relates to petroleum products and which is developed, in whole or in part, to carry out the purposes of a treaty or executive agreement to which the United States is a party or to implement a program of international cooperation between the United States and one or more foreign countries."

* * * * * * *

Sec. 9.[6] This Act and the amendments made by it shall take effect at the close of November 30, 1975, except that the amendment made by section 3 shall take effect upon the one hundred and twentieth day beginning after the date of its enactment.

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[5] S. 622 became Public Law 94-163 on Dec. 22, 1975. See page 534 for partial text.

[6] Public Law 94-220 amended sec. 9 which formerly read as follows:

"SEC. 9. This Act and the amendments made by it shall take effect on the one hundred and twentieth day beginning after the date of its enactment, except that the amendment made by section 2 shall take effect upon the close of November 30, 1975."

9. Negotiations With Canada Concerning the Alaska Pipeline

Partial text of Public Law 93-153 [S. 1081], 87 Stat. 576 at 588, approved November 16, 1973

AN ACT To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—NEGOTIATIONS WITH CANADA

Sec. 301.[1] The President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine—

(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States, including the use of tankers by way of the Northwest Passage;

(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

(c) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory;

(d) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met;

(e) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit; and

(f) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional energy from other sources that would make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area.

The President shall report to the House and Senate Committees on Interior and Insular Affairs the actions taken, the progress achieved, the areas of disagreement, and the matters about which

[1] 43 U.S.C. 1651 note.

more information is needed, together with his recommendations for further action.

* * * * * * *

10. International Energy Exposition

Public Law 96-169 [H.R. 5079], 93 Stat. 1281, approved December 29, 1979

AN ACT To provide for participation of the United States in the International Energy Exposition to be held in Knoxville, Tennessee, in 1982, and for other purposes.

Be it enacted in the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with the Act entitled "An Act to provide for Federal Government recognition of and participation in international expositions proposed to be held in the United States, and for other purposes", approved May 27, 1970 (Public Law 91-269; 22 U.S.C. 2801 et seq.), the President is authorized to provide for United States participation in an international exposition to be known as Energy-Expo 82 (hereinafter in this Act referred to as the "exposition"), to be held in Knoxville, Tennessee, in 1982. The purposes of the exposition are—

(1) to offer the citizens of the world a greater understanding of the effective uses of energy and energy resources, of the necessity to conserve existing energy resources, and of the need for creativity in the development of new and alternative energy sources; and

(2) to encourage tourist travel in and to the United States, stimulate foreign trade, and promote cultural exchanges.

Sec. 2. (a) The President, through the Secretary of Commerce (hereinafter in this Act referred to as the "Secretary") and the other officials designated in this Act, is authorized to carry out in the most effective manner the proposal for United States participation in the exposition, transmitted by the President to the Congress pursuant to section 3 of Public Law 91-269 (22 U.S.C. 2803), and to carry out the responsibilities of the Federal Government for the organization, development, and administration of the exposition as required by the Convention Relating to International Expositions, done at Paris on November 22, 1928 (hereinafter in this Act referred to as the "Convention"), and the General Rules for Energy-Expo 82, as approved by the Bureau of International Expositions.

(b) The President is authorized to appoint, by and with the advice and consent of the Senate, a Commissioner General of the United States Government for Energy-Expo 82, who shall be the senior Federal official for the exposition and who shall have such duties and exercise such responsibilities for the organization, development, and administration of the exposition as may be necessary and appropriate to fulfill the requirements of the Convention and the General Rules for Energy-Expo 82. The Commissioner General shall be in the Department of Commerce and shall be compensated at the rate of basic pay which is equal to the rate payable for level

IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c) The Secretary shall designate a Commissioner General of Section for United States participation in the exposition (as provided for in the proposal referred to in subsection (a)), who shall be in the Department of Commerce and who shall perform such duties in the execution of this Act as may be delegated or assigned by the Secretary, including serving as director of the United States pavilion.

Sec. 3. (a) The Secretary is authorized to obtain the services of consultants and experts as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate in effect for grade GS–18 under the General Schedule, to the extent the Secretary deems it necessary to carry out the provisions of this Act. Subject to the availability of appropriations, persons so appointed shall be reimbursed for travel and other necessary expenses incurred, including a per diem allowance, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(b) Subject to the availability of appropriations, the Secretary is authorized to enter into such contracts as may be necessary to provide for United States participation in the exposition.

(c) The Secretary is authorized to erect such buildings and other structures as may be appropriate for United States participation in the exposition on land (approximately 4.6 acres, including land necessary for ingress and egress) conveyed to the United States in consideration of participation by the United States in the exposition and without other consideration. The Secretary is authorized to accept title in fee simple to such land and any interest therein if the Secretary determines that it is free of liens, or of any other encumbrances, restrictions, or conditions that would interfere with the use of the property by the United States for purposes of this Act or would prevent the disposal of the property as provided in section 6. In the acceptance of such property, and in the design and construction of buildings and other structures and facilities on such property, the Secretary shall consult with the Administrator of General Services and the heads of other interested agencies to assure that such activities will be undertaken in a manner that (1) minimizes to the greatest extent practicable any adverse effects on the recreational and other environmental values of the area, and (2) preserves and enhances to the greatest extent practicable the utility of the property for public purposes, needs, or other benefits following the close of the exposition.

(d) Subject to the availability of appropriations, the Secretary is authorized to incur such other expenses as may be necessary to carry out the purposes of this Act, including but not limited to (1) expenditures involved in the selection, purchase, rental, construction, and other acquisition, and in the disposition, of exhibits and of materials and equipment for exhibits and in the actual display of exhibits, and (2) related expenditures for transportation, insurance, installation, safekeeping, printing, maintenance and operation, rental of space, representing and dismantling, and the purchase of reference books, newspapers, and periodicals.

Sec. 4. The head of each department, agency, or instrumentality of the Federal Government is authorized—

(1) to cooperate with the Secretary with respect to carrying out any of the provisions of this Act; and

(2) to make available to the Secretary from time to time, on a reimbursable or nonreimbursable basis, such personnel as may be necessary to assist the Secretary in carrying out any of the provisions of this Act.

Sec. 5. Within one year after the date of the official close of the exposition, the Secretary shall transmit to the Congress a report on the activities of the Federal Government pursuant to this Act, including a detailed statement of expenditures. Upon transmission of such report to the Congress, all appointments made under this Act shall terminate, except those which may be extended by the President for such additional period of time as he deems necessary to carry out the purposes of this Act.

Sec. 6. After the close of the exposition, all Federal property shall be disposed of in accordance with provisions of the Federal Property and Administrative Services Act of 1949 and other applicable Federal laws relating to the disposition of excess and surplus property.

Sec. 7. The functions authorized by this Act may be performed without regard to the prohibitions and limitations of the following laws:

(1) That part of section 3109(b) of title 5, United States Code, which reads "(not in excess of one year)".

(2) Section 16(a) of the Administrative Expenses Act of 1946 (31 U.S.C 638a) to the extent that it pertains to hiring automobiles.

(3) Section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481) (procurement).

(4) Section 305(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255(c)) (security for advance payments), and section 3648 of the Revised Statutes of the United States (31 U.S.C. 529) (advance of public moneys), if the Secretary determines that it is impracticable to obtain adequate security and that there is a compelling need to make an advance payment.

(5) Section 322 of the Act of June 20, 1932 (40 U.S.C 278a) (lease of buildings to the Federal Government), if the Secretary determines that waiver of that section would be in the best interests of the Federal Government.

(6) Section 2 of the Act of March 3, 1933 (41 U.S.C. 10a) (Buy American Act).

(7) Section 501 of title 44, United States Code (printing by the Government Printing Office).

(8) Section 3702 of title 44, United States Code (advertisements without authority).

(9) Section 3703 of title 44, United States Code (rates of payment for advertisements).

Sec. 8. To carry out United States participation in the exposition, there are authorized to be appropriated $20,800,000 to remain available until expended.

J. UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS

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1. The United Nations Participation Act of 1945, as amended [1]

Public Law 79-264 [S. 1580], 59 Stat. 619; 22 U.S.C. 287-287e, approved December 20, 1945, as amended by Public Law 81-216 [H.R. 5632], 63 Stat. 578, approved August 10, 1949; Public Law 81-341 [H.R. 4708], 63 Stat. 734; approved October 10, 1949; Public Law 86-707 [H.R. 7758], 74 Stat. 792, approved September 6, 1960; Public Law 89-206 [S. 1903], 79 Stat. 841, approved September 28, 1965; Public Law 93-126 [H.R. 7645], 87 Stat. 451, approved October 18, 1973; Public Law 95-12 [H.R. 1746], 91 Stat. 22, approved March 18, 1977; Public Law 96-465 [H.R. 6790], 94 Stat. 2071 at 2160, approved October 17, 1980; and by Public Law 97-241 [Department of State Authorization Act, Fiscal Years 1982 and 1983; S. 1193], 96 Stat. 273 at 279 and 280, approved August 24, 1982

An ACT To provide for the appointment of representatives of the United States in the organs and agencies of the United Nations, and to make other provision with respect to the participation of the United States in such organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United Nations Participation Act of 1945".

Sec. 2. (a)[2] The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the United Nations who shall have the rank and status of Ambassador Extraordinary and Plenipotentiary and shall hold office at the pleasure of the President. Such representative shall represent the United States in the Security Council of the United Nations and may serve ex officio as representative of the United States in any organ, commission, or other body of the United Nations other than specialized agencies of the United Nations, and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may, from time to time, direct.

(b)[2] The President, by and with the advice and consent of the Senate, shall appoint additional persons with appropriate titles, rank, and status to represent the United States in the principal organs of the United Nations and in such organs, commissions, or other bodies as may be created by the United Nations with respect to nuclear energy or disarmament (control and limitation of armament). Such persons shall serve at the pleasure of the President and subject to the direction of the Representative of the United States to the United Nations. They shall, at the direction of the Representative of the United States to the United Nations, represent the United States in any organ, commission, or other body of the United Nations, including the Security Council, the Economic and Social Council, and the Trusteeship Council, and perform such

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[1] Sec. 503 of the Foreign Relations Authorization Act, fiscal year 1978 (91 Stat. 858), called on the United States to initiate "major reforms in the United Nations system in order to make that body more effective in resolving global problems." For text of sec. 503, including specific proposals for U.S. action see vol. I, page 650.

[2] Subsecs. (a) and (b) were amended and restated by sec. 1(a) of Public Law 89-206, 79 Stat. 841. Previously amended and restated by sec. 2 of Public Law 81-341 (63 Stat. 734).

other functions as the Representative of the United States is authorized to perform in connection with the participation of the United States in the United Nations. Any Deputy Representative or any other officer holding office at the time the provisions of this Act, as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended.

(c)[3] The President, by and with the advice and consent of the Senate, shall designate from time to time to attend a specified session or specified sessions of the General Assembly of the United Nations not to exceed five representatives of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Assembly. One of the representatives shall be designated as the senior representative.

(d)[4] The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in organs and agencies of the United Nations. The President may, without the advice and consent of the Senate, designate any officer of the United States to act without additional compensation as the representative of the United States in either the Economic and Social Council or the Trusteeship Council (1) at any specified session thereof where the position is vacant or in the absence or disability of the regular representative or (2) in connection with a specified subject matter at any specified session of either such council in lieu of the regular representative. The President may designate any officer of the Department of State, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States in Security Council of the United Nations in the absence or disability of the representatives provided for under section 2 (a) and (b) or in lieu of such representatives in connection with a specified subject matter.

(e)[5] The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the European office of the United Nations with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such person shall, at the direction of the Secretary of State, represent the United States at the European office of the United Nations, and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State may, from time to time, direct.

(f)[5] Nothing contained in this section shall preclude the President or the Secretary of State, at the direction of the President, from representing the United States at any meeting or session of any organ or agency of the United Nations.

(g)[5] All persons appointed in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in

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[3] Subsec. (c) was amended and restated by sec. 1 of Public Law 81-341 (63 Stat. 734).

[4] Subsec. (d) was amended and restated by sec. 1(b) of Public Law 89-206 (79 Stat. 841). Previously amended and restated by sec. 1 of Public Law 81-341 (63 Stat. 735).

[5] Subsecs. (e) and (f) were redesignated subsecs. (f) and (g) respectively and a new subsec. (e) was added by sec. 2 of Public Law 89-206 (79 Stat. 841). The present subsec. (g) was originally added by sec. 2 of Public Law 81-341.

excess of rates authorized by sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsections (c) and (d) of this section as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation.[6]

(h)[7] The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the Vienna office of the United Nations with appropriate rank and status, who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such individual shall, at the direction of the Secretary of State, represent the United States at the Vienna office of the United Nations and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State from time to time may direct.

Sec. 3.[8] The representatives provided for in section 2 hereof, when representing the United States in the respective organs and agencies of the United Nations, shall, at all times, act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Charter of the United Nations.

Sec. 4.[9] The President shall, from time to time as occasion may require, but not less than once each year, make reports to the Congress of the activities of the United Nations and of the participation of the United States therein. He shall make special current reports on decisions of the Security Council to take enforcement measures under the provisions of the Charter of the United Nations, and on the participation therein, under his instructions, of the representative of the United States.

Sec. 5.[10] (a) Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Chapter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any

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[6] References in this sentence to the Foreign Service Act of 1980 and to the Senior Foreign Service were inserted by sec. 2206(a)(2) of Public Law 96-465 (94 Stat. 2160), effective Feb. 15, 1981. These replaced a reference to the Foreign Service Act of 1946.

[7] Subsec. (h) was added by sec. 118 of the Department of State Authorization Act, Fiscal Years 1982 and 1983 (Public Law 97-273; 96 Stat. 279).

[8] 22 U.S.C. 287a.

[9] 22 U.S.C. 287b.

[10] 22 U.S.C. 287c. See also partial text of Public Law 92-156 on page 589.

property subject to the jurisdiction of the United States. Any Executive order which is issued under this subsection and which applies measures against Southern Rhodesia pursuant to any United Nations Security Council Resolution may be enforced, notwithstanding the provisions of any other law.[11] The President may exempt from such Executive order any shipment of chromium in any form which is in transit to the United States on the date of enactment of this sentence.[12]

(b) Any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to paragraph (a) of this section shall, upon conviction, be fined not more than $10,000 or, if a natural person, be imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft,[13] concerned in such violation shall be forfeited to the United States.

(c)[14] (1) During the period in which measures are applied against Southern Rhodesia under subsection (a) pursuant to any United Nations Security Council Resolution, a shipment of any steel mill product (as such product may be defined by the Secretary) containing chromium in any form may not be released from customs custody for entry into the United States if—

(A) a certificate of origin with respect to such shipment has not been filed with the Secretary; or

(B) in the case of a shipment with respect to which a certificate of origin has been filed with the Secretary, the Secretary determines that the information contained in such certificate does not adequately establish that the steel mill product in such shipment does not contain chromium in any form which is of Southern Rhodesian origin;

unless such release is authorized by the Secretary under paragraph (3) (B) or (C).

(2) The Secretary shall prescribe regulations for carrying out this subsection.

(3)(A) In carrying out this subsection, the Secretary may issue subpenas requiring the attendance and testimony of witnesses and the production of evidence. Any such subpena may, upon applica-

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[11] Such an Executive order was issued on Mar. 18, 1977, E.O. 11978 (amending E.O. 11419). See also sec. 27 of the International Security Assistance Act of 1978 (92 Stat. 746) which specified that the United States would not enforce sanctions against Rhodesia after Dec. 31, 1978, provided that the President made certain determinations regarding the political situation in Rhodesia (page 293, ft. 11, vol. I). The policy contained in sec. 27 was never implemented since the President did not issue the necessary determinations. See also sec. 408 of the Department of State Authorization Act. Fiscal year 1980–81 (Public Law 96–60; 93 Stat. 405) which contains several congressional findings regarding the Zimbabwe-Rhodesia situation and instructed the President to terminate sanctions against Zimbabwe-Rhodesia by Nov. 15, 1979, unless he determined that it would not be in the national interest of the United States to do so. On Nov. 14, President Carter issued Determination No. 80–6 (44 F.R. 67073) making a finding that it was not in the interest of the United States to terminate the sanctions. For complete text of sec. 408, see vol. I, page 622, ft. 9. However, on Dec. 16, 1979, the President issued Executive Order 12183 (44 F.R. 74787) which revoked all sanctions against Zimbabwe-Rhodesia. Such Executive order also revoked Executive Orders 11322, 11419, and 11978.

[12] The final two sentences of subsec. (a) were added by Public Law 95–12 (91 Stat. 22).

[13] The words "or aircraft" added by sec. 3 of Public Law 81–341 (63 Stat. 735).

[14] Subsec. (c) was added by Public Law 95–12 (91 Stat. 22).

tion by the Secretary, be enforced in a civil action in an appropriate United States district court.

(B) The Secretary may exempt from the certification requirements of this subsection any shipment of a steel mill product containing chromium in any form which is in transit to the United States on the date of enactment of this subsection.

(C) Under such circumstances as he deems appropriate, the Secretary may release from customs custody for entry into the United States, under such bond as he may require, any shipment of a steel mill product containing chromium in any form.

(4) As used in this subsection—

(A) the term "certificate of origin" means such certificate as the Secretary may require, with respect to a shipment of any steel mill product containing chromium in any form, issued by the government (or by a designee of such government if the Secretary is satisfied that such designee is the highest available certifying authority) of the country in which such steel mill product was produced certifying that the steel mill product in such shipment contains no chromium in any form which is of Southern Rhodesian origin; and

(B) the term "Secretary" means the Secretary of the Treasury.

Sec. 6.[15] The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general locations, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the Armed forces, facilities, or assistance provided for therein: *Provided,* That, except as authorized in section 7 of this Act,[16] nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements.

Sec. 7.[17] (a) Notwithstanding the provisions of any other law, the President, upon the request by the United Nations for cooperative action, and to the extent that he finds that it is consistent with the national interest to comply with such request, may authorize, in support of such activities of the United Nations as are specifically directed to the peaceful settlement of disputes and not involving

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[15] 22 U.S.C. 287d.

[16] The words "except as authorized in section 7 of this Act" added by sec. 4 of Public Law 81-341 (63 Stat. 735).

[17] 22 U.S.C. 287d-1. Sec. 7 was added by sec. 5 of Public Law 81-341 (63 Stat. 735). Sec. 12(a) of Public Law 81-216 (63 Stat. 591), changed the term "National Military Establishment" to "Department of Defense".

the employment of armed forces contemplated by chapter VII of the United Nations Charter—

(1) the detail to the United Nations, under such terms and conditions as the President shall determine, of personnel of the armed forces of the United States to serve as observers, guards, or in any noncombatant capacity, but in no event shall more than a total of one thousand of such personnel be so detailed at any one time: *Provided,* That while so detailed, such personnel shall be considered for all purposes as acting in the line of duty, including the receipt of pay and allowances as personnel of the armed forces of the United States, credit for longevity and retirement, and all other perquisites appertaining to such duty: *Provided further,* That upon authorization or approval by the President, such personnel may accept directly from the United Nations (a) any or all of the allowances or perquisites to which they are entitled under the first proviso hereof, and (b) extraordinary expenses and perquisites incident to such detail;

(2) the furnishing of facilities, services, or other assistance and the loan of the agreed fair share of the United States of any supplies and equipment to the United Nations by the Department of Defense, under such terms and conditions as the President shall determine;

(3) the obligation, insofar as necessary to carry out the purposes of clauses (1) and (2) of this subsection, of any funds appropriated to the Department of Defense or any department therein, the procurement of such personnel, supplies, equipment, facilities, services, or other assistance as may be made available in accordance with the request of the United Nations, and the replacement of such items, when necessary, where they are furnished from stocks.

(b) Whenever personnel or assistance is made available pursuant to the authority contained in subsection (a) (1) and (2) of this section, the President shall require reimbursement from the United Nations for the expense thereby incurred by the United States: *Provided,* That in exceptional circumstances, or when the President finds it to be in the national interest, he may waive, in whole or in part, the requirement of such reimbursement: *Provided further,* That when any such reimbursement is made, it shall be credited, at the option of the appropriate department of the Department of Defense, either to the appropriation, fund, or account utilized in incurring the obligation, or to an appropriate appropriation, fund, or account currently available for the purposes for which expenditures were made.

(c) In addition to the authorization of appropriations to the Department of State contained in section 8 of this Act, there is hereby authorized to be appropriated to the Department of Defense, or any department therein, such sums as may be necessary to reimburse such departments in the event that reimbursement from the United Nations is waived in whole or in part pursuant to authority contained in subsection (b) of this section.

(d) Nothing in this Act shall authorize the disclosure of any information or knowledge in any case in which such disclosure is prohibited by any other law of the United States.

Sec. 8.[18] There is hereby authorized to be appropriated annually to the Department of State, out of any money in the treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the United Nations as apportioned by the General Assembly in accordance with article 17 of the Charter, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof, and of their appropriate staffs, including personal services in the District of Columbia and elsewhere, without regard to the civil-service laws and the Classification Act of 1923, as amended;[19] travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949,[20] and section 10 of the Act of March 3, 1933, as amended,[21] and, under such rules and regulations as the Secretary of State may prescribe, travel expenses of families and transportation of effects of United States representatives and other personnel in going to and returning from their post of duty; allowances for living quarters, including heat, fuel, and light, as authorized by the Act approved June 26, 1930 (5 U.S.C. 118a);[22] cost-of-living allowances for personnel stationed abroad under such rules and regulations as the Secretary of State may prescribe; communications services; stenographic reporting, translating, and other services, by contract; hire of passenger motor vehicles and other local transportation; rent of offices; printing and binding without regard to section 11 of the Act of March 1, 1949 (44 U.S.C. 111); allowances and expenses as provided in section 6 of the Act of July 30, 1946 (Public Law 565, Seventy-ninth Congress),[23] and allowances and expenses equivalent to those provided in section 905 of the Foreign Service Act of 1980,[24] the lease or rental (for periods not exceeding ten years) of living quarters for the use of the representatives provided for in section 2 of this Act and of their appropriate staffs,[25] the cost of installation and use of telephones in the same manner as telephone service is provided for use of the Foreign Service pursuant to the

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[18] 22 U.S.C. 287e. Added originally as sec. 7, it was redesignated as sec. 8 by sec. 6 of Public Law 81-341 (63 Stat. 736).

Sec. 410 of the Foreign Assistance Act of 1971, Public Law 92-226, approved Feb. 7, 1972, provides as follows:

"The Congress strongly urges the President to undertake such negotiations as may be necessary to implement that portion of the recommendations of the Report of the President's Commission for the Observance of the Twenty-fifth Anniversary of the United Nations (known as the "Lodge Commission") which proposes that the portion of the regular assessed costs to be paid by the United States to the United Nations be reduced so that the United States is assessed in each year not more than 25 per centum of such costs assessed all members of the United Nations for that year."

[19] Classification Act of 1923, as amended, is now the Classification Act of 1949, as amended (5 U.S.C. 305, 5101-5113, 5115, 5331-5338, 5341, 5342, 5509, 7154).

[20] Travel Expense Act of 1949 is now amended (5 U.S.C. 5701, 5702, 5704-5708).

[21] 5 U.S.C. 5731.

[22] Act of June 26, 1930, is now amended (5 U.S.C. 5912).

[23] Sec. 6 of the act of July 30, 1946, as amended (22 U.S.C. 287r).

[24] The reference to sec. 905 of the Foreign Service Act of 1980 was inserted by sec. 2206(a)(2) of Public Law 96-465 (94 Stat. 2160), effective February 15, 1981. This replaced a reference to sec. 901(3) of the Foreign Service Act of 1946.

[25] The words "representatives provided for in section 2 of this Act and of their appropriate staffs" were inserted in lieu of "representative of the United States to the United Nations referred to in paragraph (a) of section 2 hereof" by sec. 119(1) of the Department of State Authorization Act, Fiscal Years 1982 and 1983 (Public Law 97-241; 96 Stat. 280).

Act of August 23, 1912, as amended (31 U.S.C. 679), and [26] unusual expenses similar to those authorized by section 22 of the Administrative Expenses Act of 1946, as amended [27] by section 311 of the Overseas Differentials and Allowances Act, incident to the operation and maintenance of such living quarters; and such other expenses as may be authorized by the Secretary of State; and without regard to section 3709 of the Revised Statutes as amended (41 U.S.C. 5). Any payments made by United States Government personnel for occupancy by them of living quarters leased or rented under this section shall be credited to the appropriation, fund, or account utilized by the Secretary of State for such lease or rental or to the appropriation, fund, or account currently available for such purpose.[28]

Sec. 9.[29] The President may, under such regulations as he shall prescribe, and notwithstanding section 3648 of the Revised Statutes (31 U.S.C. 529) and section 5536 of title 5, United States Code—

(1) grant any employee of the staff of the United States Mission to the United Nations designated by the Secretary of State who is required because of important representational responsibilities to live in the extraordinarily high-rent area immediately surrounding the headquarters of the United Nations in New York, New York, an allowance to compensate for the portion of expenses necessarily incurred by the employee for quarters and utilities which exceed the average of such expenses incurred by typical, permanent residents of the Metropolitan New York, New York, area with comparable salary and family size who are not compelled by reason of their employment to live in such high-rent area; and

(2) provide such allowance as the President considers appropriate, to each Delegate and Alternate Delegate of the United States to any session of the General Assembly of the United Nations who is not a permanent member of the staff of the United States Mission to the United Nations, in order to compensate each such Delegate or Alternate Delegate for necessary housing and subsistence expenses incurred by him with respect to attending any such session.

Not more than forty-five employees shall be receiving an allowance under paragraph (1) of this section at any one time.

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[26] Sec. 311(b) of Public Law 86-707 substituted the phrase "and unusual expenses * * *" for the previous clause.

[27] Sec. 22 of the Administrative Expenses Act of 1946, as amended, is now codified as 5 U.S.C. 5913 by Public Law 89-554, 80 Stat. 378 at 510, Sept. 6, 1966.

[28] This sentence was added by sec. 119(2) of the Department of State Authorization Act, Fiscal Years 1982 and 1983 (Public Law 97-273; 96 Stat. 280).

[29] 22 U.S.C. 287e-1. Sec. 9 was added by sec. 15 of Public Law 93-126 (87 Stat. 454).

2. The United Nations Headquarters Agreement Act

Public Law 80-357 [S.J. Res. 144], 61 Stat. 756, approved August 4, 1947

JOINT RESOLUTION authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes.[1]

Whereas the Charter of the United Nations was signed on behalf of the United States on June 26, 1945, and was ratified on August 8, 1945, by the President of the United States, by and with the advice and consent of the Senate, and the instrument of ratification of the said Charter was deposited on August 8, 1945; and

Whereas the said Charter of the United Nations came into force with respect to the United States on October 24, 1945; and

Whereas article 104 of the Charter provides that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes"; and

Whereas article 105 of the Charter provides that:

"1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

"2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

"3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this article or may propose conventions to the Members of the United Nations for this purpose."; and

Whereas article 28 and other articles of the Charter of the United Nations contemplate the establishment of a seat for the permanent headquarters of the Organization; and

Whereas the interim arrangements concluded on June 26, 1945, by the governments represented at the United Nations Conference on International Organization instructed the Preparatory Commission established in pursuance of the arrangements to "make studies and prepare recommendations concerning the location of the permanent headquarters of the Organization"; and

Whereas during the labors of the said Preparatory Commission, the Congress of the United States in H. Con. Res. 75, passed unanimously by the House of Representatives December 10, 1945, and agreed to unanimously by the Senate December 11, 1945, invited

[1] 22 U.S.C. 287 footnote.

the United Nations "to locate the seat of the United Nations Organization within the United States"; and

Whereas the General Assembly on December 14, 1946, resolved "that the permanent headquarters of the United Nations shall be established in New York City in the area bounded by First Avenue, East Forty-eighth Street, the East River, and East Forty-second Street"; and

Whereas the General Assembly resolved on December 14, 1946, "That the Secretary-General be authorized to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of the permanent headquarters of the United Nations in the city of New York" and to be guided in these negotiations by the provisions of a preliminary draft agreement which had been negotiated by the Secretary-General and the Secretary of State of the United States; and

Whereas the General Assembly resolved on December 14, 1946, that pending the coming into force of the agreement referred to above "the Secretary-General be authorized to negotiate and conclude arrangements with the appropriate authorities of the United States of America to determine on a provisional basis the privileges, immunities, and facilities needed in connection with the temporary headquarters of the United Nations"; and

Whereas the Secretary of State of the United States, after consultation with the appropriate authorities of the State and city of New York, signed at Lake Success, New York, on June 26, 1947, on behalf of the United States an agreement with the United Nations regarding the headquarters of the United Nations, which agreement is incorporated herein; and

Whereas the aforesaid agreement provides that it shall be brought into effect by an exchange of notes between the United States and the Secretary-General of the United Nations: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to bring into effect on the part of the United States the agreement between the United States of America and the United Nations regarding the headquarters of the United Nations, signed at Lake Success, New York, on June 26, 1947 (hereinafter referred to as the "agreement"), with such changes therein not contrary to the general tenor thereof and not imposing any additional obligations on the United States as the President may deem necessary and appropriate, and at his discretion, after consultation with the appropriate State and local authorities, to enter into such supplemental agreements with the United Nations as may be necessary to fulfill the purposes of the said agreement: *Provided,* That any supplemental agreement entered into pursuant to section 5 of the agreement incorporated herein shall be submitted to the Congress for approval. The agreement follows:[2]

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[2] For text of the agreement, see vol. III, p. 700.

3. Appropriations Limitation on Contributions to International Organizations [1]

Partial text of Public Law 92-544 [H.R. 14989], 86 Stat. 1109, 1110, approved October 25, 1972

AN ACT Making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1973, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1973, and for other purposes, namely:

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CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS [1]

* * * *Provided,* That after December 31, 1973, no appropriation is authorized and no payment shall be made to the United Nations

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[1] Restriction in Public Law 82-495, 66 Stat. 550, July 10, 1952. Department of State Appropriation Act, 1953, is considered permanent legislation with respect to the international organizations not exempted. See 22 U.S.C. 262b. It reads as follows:

"No representative of the United States Government in any international organization after fiscal year 1953 shall make any commitment requiring the appropriation of funds for a contribution by the United States in excess of 33⅓ per centum of the budget of any international organization for which the appropriation for the United States contribution is contained in this Act: *Provided,* That in exceptional circumstances necessitating a contribution by the United States in excess of 33⅓ per centum of the budget, a commitment requiring a United States appropriation of a larger proportion may be made after consultation by United States representatives in the organization or other appropriate officials of the Department of State with the Committees on Appropriations of the Senate and House of Representatives: *Provided, however,* That this section shall not apply to the United States representatives to the Inter-American organizations, Caribbean Commission and the Joint Support program of the International Civil Aviation Organization."

This provision was first included in sec. 602 of Public Law 83-188, 65 Stat. 599, Oct. 22, 1951, Departments of State, Justice, Commerce, and the Judiciary Appropriation Act, 1952.

The exemption granted to the Caribbean Commission and the Joint Support program of the International Civil Aviation Organization was added by Public Law 83-195, 67 Stat. 368. Aug. 5, 1953, Department of State Appropriation Act, 1954.

NOTE: In addition, there are specific legislative limitations on the percentage contribution of the United States to the following organizations:

(1) 33⅓ percent to the World Health Organization (Act of July 14, 1948; 22 U.S.C. 290(b). However, sec. 103 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 844), stated that notwithstanding the provisions of Public Law 92-544, $7,281,583 of the FY 1978 appropriation authorization for "International Organizations and Conferences" is authorized to be paid to the World Health Organization for any unpaid balance of the U.S. assessed contribution to such organization for the calendar years 1974 through 1977. See vol. I, sec. E for complete text;

(2) 33⅓ percent to the Food and Agriculture Organization (Act of July 31, 1945; 22 U.S.C. 279a);

(3) 25 percent to the International Labor Organization (Act of June 30, 1948; 22 U.S.C. 272a);

(4) 25 percent to the NATO Parliamentary Conference (Act of July 11, 1956; 22 U.S.C. 1928b); and

(5) Not to exceed 20 per centum of the total contributions assessed for any period to administer the International Coffee Agreement (TIAS 5505; 14 UST 1911, Sept. 28, 1962), and such amount shall not exceed $150,000 for any fiscal year, to the International Coffee Organization (sec. 6 of Public Law 89-23, 79 Stat. 113, approved May 22, 1965).

or any affiliated agency in excess of 25 per centum [1] of the total annual assessment of such organization. Appropriations are authorized and contributions and payments may be made to the following organizations and activities notwithstanding that such contributions and payments are in excess of 25 per centum of the total annual assessment of the respective organization or 33⅓ per centum of the budget for the respective activity: the International Atomic Energy Agency, the joint financing program of the International Civil Aviation Organization, and contributions for international peacekeeping activities conducted by or under the auspices of the United Nations or through multilateral agreements.[2]

* * * * * * *

[2] Sec. 203 of Public Law 94-141, Foreign Relations Authorization Act, Fiscal Year 1976, inserted a period after "organization", struck out the text following it, and inserted the language beginning with "Appropriations are authorized". Formerly, the section following "organization" read "except that this proviso shall not apply to the International Atomic Energy Agency and to the joint financing program of the International Civil Aviation Organization."

4. Rhodesia Legislation

a. To Halt the Importation of Rhodesian Chrome

Partial text of Public Law 95–12 [H.R. 1746], 91 Stat. 22, approved March 18, 1977

AN ACT To amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome.

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Sec. 2. (a) Upon the enactment of this Act, the President may suspend the operation of the amendments contained in this Act [1] if he determines that such suspension would encourage meaningful negotiations and further the peaceful transfer of governing power from minority rule to majority rule in Southern Rhodesia. Such suspension shall remain in effect for such duration as deemed necessary by the President.

(b) If the President suspends the operation of the amendments contained in this Act, he shall so report to the Congress. In addition, the President shall report to the Congress when he terminates such suspension.

(c) If the President suspends the operation of the amendments contained in this act, any reference in those amendments to date of enactment shall be deemed to be a reference to the date on which such suspension is terminated by the President.

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[1] All amendments contained in this act are incorporated into sec. 5 of the United Nations Participation Act of 1945. For text of sec. 5, see page 577. See also sec. 27 of the International Security Assistance Act of 1978 (92 Stat. 746) (page 293, ft. 11, vol. I) which specified that the United States would not enforce sanctions against Rhodesia after Dec. 31, 1978, provided that the President made certain determinations regarding the political situation in that country. The policy contained in sec. 27 was never implemented since the President did not issue the necessary determinations. See also sec. 408 of the Department of State Authorization Act. Fiscal year 1980–81 (Public Law 96–60; 93 Stat. 405) which contains several congressional findings regarding the Zimbabwe-Rhodesia situation and instructed the President to terminate sanctions against Zimbabwe-Rhodesia by Nov. 15, 1979 unless he determined that it would not be in the national interest of the United States to do so. On Nov. 14, President Carter issued Determination No. 80–6 (44 F.R. 67073) making a finding that it was not in the interest of the United States to terminate the sanctions. For complete text of sec. 408, see vol. I, page 622, ft. 9. However, on Dec. 16, 1979, the President issued Executive Order 12183 (44 F.R. 74787) which revoked all sanctions against Zimbabwe-Rhodesia.

b. Executive Order 12183, December 16, 1979, 44 F.R. 74787

REVOKING RHODESIAN SANCTIONS

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and in order to terminate current limitations relating to trade and other transactions involving Zimbabwe-Rhodesia, it is hereby ordered as follows:

1-101. (a) Subject to the provisions of this order, the following are hereby revoked with respect to transactions occurring after the effective date of this order:

(1) Executive Order 11322 of January 5, 1967 (32 F.R. 119);

(2) Executive Order 11419 of July 29, 1968 (33 F.R. 10837) and;

(3) Executive Order 11978 of March 18, 1977 (42 F.R. 15403).

(b) To the extent consistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, licenses, contracts, agreements, and other actions made, issued, taken, or entered into under the provisions of such Executive orders and not previously revoked, superseded, or otherwise made inapplicable shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

1-102. (a) The Secretaries of State, the Treasury, Commerce, and Transportation, and the heads of other government agencies, shall retain the authority and responsibility for the enforcement of Executive Orders 11322, 11419, and 11978 with respect to transactions occurring prior to the effective date of this order.

(b) The revocation, in section 1-101 of this order, of such prior Executive orders shall not affect:

(1) any act done or omitted to be done or any suit or proceeding finished or started in civil or criminal cases prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and may be enforced in the same manner as if the revocation had not been made; or

(2) any violation of any rules, regulations, orders, licenses, or other forms of administrative action under those revoked orders during the periods those orders were in effect.

1-103. (a) The Secretaries of State, the Treasury, Commerce, and Transportation, and the heads of other government agencies, shall take the appropriate measures to implement this order.

(b) In carrying out their respective functions and responsibilities under this order, the Secretaries of the Treasury, Commerce, and Transportation, and the heads of other government agencies, shall, as appropriate, consult with the Secretary of State. Each such Secretary and agency head and the Secretary of State shall also consult with other government agencies and private persons, as appropriate.

c. Armed Forces Appropriation Authorization, 1972

Partial text of Public Law 92-156 [H.R. 8687], 85 Stat. 423, approved November 17, 1971

AN ACT To authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to authorize real estate acquisition and construction at certain installations in connection with the Safeguard anti-ballistic missile system, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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Sec. 503. The Strategic and Critical Materials Stock Piling Act (60 Stat. 596; 50 U.S.C. 98-98h) is amended (1) by redesignating section 10 as section 11, and (2) by inserting after section 9 a new section 10 as follows:

"Sec. 10.[1] Notwithstanding any other provision of law, on and after January 1, 1972, the President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provision of law."

[1] This section was redesignated as sec. 13 of the Strategic and Critical Stock Piling Act by sec. 2(b)(1) of Public Law 96-41 (93 Stat. 324).

d. Department of Defense Authorization Act, 1980

Partial text of Public Law 96-107 [S. 428], 93 Stat. 803 at 818, approved November 9, 1979

AN ACT To authorize appropriations for fiscal year 1980 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1980 for civil defense, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Defense Authorization Act, 1980".

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SENSE OF CONGRESS CONCERNING IMPORTATION OF STRATEGIC AND CRITICAL MATERIALS FROM ZIMBABWE-RHODESIA

Sec. 818. It is the sense of the Congress that the United States should have unlimited access to strategic and critical materials which are vital to the defense and security of the United States and that every effort should be made to remove artificial impediments against the importation of such materials into the United States from Zimbabwe-Rhodesia.

5. United Nations Peacekeeping Forces in the Middle East

Public Law 94–37 [S. 818], 89 Stat. 216, approved June 19, 1975

AN ACT To authorize United States payments to the United Nations for expenses of the United Nations peacekeeping forces in the Middle East, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated to the Department of State such sums as may be necessary from time to time for payment by the United States of its share of the expenses of the United Nations peacekeeping forces in the Middle East, as apportioned by the United Nations in accordance with article 17 of the United Nations Charter, notwithstanding the limitation on contributions to international organizations contained in Public Law 92–544 (86 Stat. 1109).[1]

[1] For text, see page 585. Public Law 96–68 (Department of State Appropriation Act, 1980; 93 Stat. 417) appropriated $67,000,000 for U.S. payment to the United Nations peacekeeping forces in the Middle East.

6. Response to United Nations Resolution on Zionism

House Resolution 855, 94th Congress, agreed to November 11, 1975[1]

Whereas the United States, as a founder of the United Nations Organization has a fundamental interest in promoting the purposes and principles for which that organization was created; and

Whereas the Article I of the Charter of the United Nations the stated purpose of the United Nations include: "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion;" and

Whereas the General Assembly of the United Nations decided to launch on December 10, 1973, a Decade of Action to Combat Racism and Racial Discrimination and a program of action which the United States supported and in which it desires to participate; and

Whereas the United Nations General Assembly on November 10, 1975, adopted a resolution which describes Zionism as a form of racism thereby identifying it as a target of the Decade for Action to Combat Racism and Discrimination; and

Whereas the extension of the program of the Decade to include a campaign against Zionism brings the United Nations to a point of encouraging anti-Semitism, one of the oldest and most virulent forms of racism known to human history: Now, therefore, be it

Resolved, That the House of Representatives sharply condemns the resolution adopted by the General Assembly on November 10, 1975, in that said resolution encourages anti-Semitism by wrongly associating and equating Zionism with racism and racial discrimination, thereby contradicting a fundamental purpose of the United Nations Charter; and be it

Resolved, That the House strongly opposes any form of participation by the United States Government in the Decade for Action to Combat Racism and Racial Discrimination so long as that Decade and program remain distorted and compromised by the aforementioned resolution naming Zionism as one of the targets of that struggle; and be it

Resolved, That the House calls for an energetic effort by all those concerned with the adherence of the United Nations to the purposes stated in its Charter to obtain reconsideration of the aforementioned resolution with a view to removing the subject of Zionism, which is a national but in no way a racist philosophy, from the context of any programs and discussions focusing on racism or racial discrimination.

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[1] Two similar resolutions were passed by the Senate in the 94th Congress: Senate Resolution 288, agreed to Oct. 28, 1975, and Senate Concurrent Resolution 73, agreed to Nov. 12, 1975.

7. United Nations Environment Program Participation Act of 1973

Public Law 93-188 [H.R. 6788], 87 Stat. 713, approved December 15, 1973

AN ACT To provide for participation by the United States in the United Nations environment program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United Nations Environment Program Participation Act of 1973".

Sec. 2. It is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern, and in order to assist the implementation of this policy, to contribute funds to the United Nations Environmental Fund for the support of international measures to protect and improve the environment.

Sec. 3. There is authorized to be appropriated $40,000,000 for contributions to the United Nations Environment Fund, which amount is authorized to remain available until expended, and which may be used upon such terms and conditions as the President may specify: *Provided,* That not more than $10,000,000 may be appropriated for use in fiscal year 1974.[1]

[1] The Foreign Assistance Appropriations Act, 1977 provided $10,000,000 for necessary expenses to carry out the provisions of sec. 2.

8. Privileges and Immunities

a. The International Organizations Immunities Act, as amended [1]

Partial text of Public Law 79-291 [H.R. 4489], 59 Stat. 669, approved December 29, 1945, as amended by Public Law 89-353 [H.R. 8210], 80 Stat. 5, approved February 2, 1966; Public Law 93-161 [H.R. 8219], 87 Stat. 635, approved November 27, 1973; and by Public Law 96-60 [H.R. 3363], 93 Stat. 403, approved August 15, 1979

AN ACT To extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

Section 1.[2] For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.[3]

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[1] Title II is unrelated to the United Nations and has been omitted.

[2] 22 U.S.C. 288.

[3] The following international organizations are currently designated by the President as public international organizations entitled to enjoy the privileges, exemptions and immunities of the International Organizations Immunities Act:

Executive Order No.	Date	Organization
9698	Feb. 19, 1946	The Food and Agriculture Organization.
		The International Labor Organization.
		The United Nations.
9751	July 11, 1946	Inter-American Institute of Agricultural Sciences.
		Inter-American Statistical Institute.
		International Bank for Reconstruction and Development.
		International Monetary Fund.
9823	Jan. 24, 1947	International Wheat Advisory Committee. (International Wheat Council.)
9863	May 31, 1947	United Nations Educational, Scientific, and Cultural Organization.
		International Civil Aviation Organization.
		International Telecommunication Union.
9911	Dec. 10, 1947	International Cotton Advisory Committee.
9972	June 25, 1948	International Joint Commission, United States and Canada.
10025	Dec. 30, 1948	World Health Organization.
10086	Nov. 25, 1949	South Pacific Commission.
10133	June 27, 1950	Organization for European Economic Cooperation.
10228	Mar. 26, 1951	Inter-American Defense Board.
10335	Mar. 28, 1952	Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now the Intergovernmental Committee for European Migration).
10533	June 3, 1954	Organization of American States (includes the Pan American Union, previously designated Feb. 19, 1946, by Executive Order No. 9698).
10676	Sept. 1, 1956	World Meteorological Organization.
10680	Oct. 2, 1956	International Finance Corporation.
10727	Aug. 31, 1957	International Atomic Energy Agency (included the Preparatory Commission of the International Atomic Energy Agency).
		Universal Postal Union.
10769	May 20, 1958	International Hydrographic Bureau.
10795	Dec. 13, 1958	Intergovernmental Maritime Consultative Organization.
10864	Feb. 18, 1960	Pan American Health Organization (includes the Pan American Sanitary Bureau, previously designated July 11, 1946, by Executive Order No. 9751).
10873	Apr. 8, 1960	Inter-American Development Bank.
10983	Dec. 30, 1961	Caribbean Organization.
11059	Oct. 23, 1962	Inter-American Tropical Tuna Commission.
		Great Lakes Fishery Commission.
		International Pacific Halibut Commission.
11225	May 22, 1965	International Coffee Organization.
11227	June 2, 1965	Interim Communications Satellite Committee.
11277	Apr. 30, 1966	International Telecommunications Satellite Consortium.
11283	May 27, 1966	International Cotton Institute.
11334	Mar. 7, 1967	Asian Development Bank.
11363	July 20, 1967	International Secretariat for Volunteer Service.
11372	Sept. 18, 1967	Lake Ontario Claims Tribunal (status revoked by Executive Order 11439, Dec. 7, 1968).
11484	Sept. 29, 1969	United International Bureau for the Protection of Intellectual Property (BIRPI).
11596	June 5, 1971	Customs Cooperation Council.
11718	May 14, 1973	International Telecommunications Satellite Organization.
11760	Jan. 17, 1974	European Space Research Organization (ESRO) (superseding Executive Orders 11318 and 11351).
11767	Feb. 19, 1974	Organization of African Unity.
11866	June 20, 1975	World Intellectual Property Organization.
11966	Jan. 19, 1977	International Development Association.
		International Centre for Settlement of Investment Disputes.
		International Telecommunications Satellite Organization.
11977	Mar. 14, 1977	The African Development fund.
		The International Fertilizer Development Center.
12238	Sept. 12, 1980	International Maritime Satellite Organization.
12359	Apr. 22, 1982	The Multinational Force and Observers.
		The International Food Policy Research Institute (except for those provided by sec. 2(a)–(c), the last clause of sec. 2(d), and sec. 7(b).

Sec. 2.[4] International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity—

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purposes of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

Sec. 3.[5] Pursuant to regulations prescribed by the Commissioner of Customs with approval of the Secretary of the Treasury, the baggage and effects of aliens, officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation.

Sec. 4.[6] The Internal Revenue Code is hereby amended as follows:

(a)[7] Effective with respect to taxable years beginning after December 31, 1943, section 116(c), relating to the exclusion from gross income of income of foreign governments, is amended to read as follows:

"(c) INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS.—The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be in-

[4] 22 U.S.C. 288a.
[5] 22 U.S.C. 288b.
[6] The provisions of sec. 4 are contained in title 26 of the United States Code, as noted below.
[7] 26 U.S.C. 892.

cluded in gross income and shall be exempt from taxation under this subtitle."

(b)[8] Effective with respect to taxable years beginning after December 31, 1943, section 116(h)(1), relating to the exclusion from gross income of amounts paid employees of foreign governments, is amended to read as follows:

"(1) RULE FOR EXCLUSION.—Wages, fees, or salary of any employee of a foreign government or of an international organization or of the Commonwealth of the Philippines (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government, international organization, or such Commonwealth—

"(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

"(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

"(C) If, in the case of an employee of a foreign government or the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be."

(c) Effective January 1, 1946, section 1426(b), defining the term "employment" for the purposes of the Federal Insurance Contributions Act, is amended (1) by striking out that word "or" at the end of paragraph (14), (2) by striking out the period at the end of paragraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new paragraph:

"(16)[9] Service performed in the employ of an international organization."

(d) Effective January 1, 1946, section 1607(c), defining the term "employment" for the purposes of the Federal Unemployment Tax Act, is amended (1) by striking out the word "or" at the end of paragraph (14), (2) by striking out the period at the end of paragraph (15) and inserting in lieu thereof a semicolon and the word "or," and (3) by inserting at the end of the subsection the following new paragraph;

"(16)[10] Service performed in the employ of an international organization."

(e)[11] Section 1621(a)(5), relating to the definition of "wages" for the purpose of collection of income tax at the source, is amended by inserting after the words "foreign government" the words "or an international organization".

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[8] 26 U.S.C. 893(a).
[9] 26 U.S.C. 3121(b)(15).
[10] 26 U.S.C. 3306(c)(16).
[11] 26 U.S.C. 3401(a)(5).

(f)[12] Section 3466(a), relating to exemption from communications taxes is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(g)[13] Section 3469(f)(1), relating to exemption from the tax on transportation of persons, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(h)[14] Section 3475(5)(1), relating to exemption from the tax on transportation of property, is amended by inserting immediately after the words "the District of Columbia" a comma and the words "or an international organization".

(i) Section 3797(a), relating to definitions, is amended by adding at the end thereof a new paragraph as follows:

"(18)[15] INTERNATIONAL ORGANIZATION.—The term 'international organization' means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

Sec. 5. (a)[16] Effective January 1, 1946, section 209(b) of the Social Security Act, defining the term "employment" for the purposes of title II of the Act, is amended (1) by striking out the word "or" at the end of paragraph (14), (2) by striking out the period at the end of paragraph (15) and inserting in lieu thereof a semicolon and the word "or", and (3) by inserting at the end of the subsection the following new paragraph:

"(16) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act."

(b)[17] No tax shall be collected under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1946, which are described in paragraph (16) of sections 1426(b) and 1607(c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (included penalty and interest with respect thereto, if any) shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act with respect to services rendered prior to January 1, 1946, which are described in paragraph (16) of section 209(b) of such Act, as amended.

Sec. 6.[18] International organizations shall be exempt from all property taxes imposed by, or under the authority of, any Act of Congress, including such Acts as are applicable solely to the District of Columbia or the Territories.

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[12] 26 U.S.C. 4253(c).
[13] 26 U.S.C. 4263(b).
[14] 26 U.S.C. 4272(d), relating to exemption from tax on transportation property, repealed with 26 U.S.C. 4271–4273 by Public Law 85–475, Sec. 4(a), June 30, 1958, 72 Stat. 260.
[15] 26 U.S.C. 7701(a)(18).
[16] 42 U.S.C. 410(a)(15).
[17] 26 U.S.C. 3101 Historical Note; 42 U.S.C. 401 Historical Note.
[18] 22 U.S.C. 288c.

Sec. 7.[19] (a) Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employees residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, and the registration of foreign agents, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families.

(b) Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

(c)[20] Section 3 of the Immigration Act approved March 26, 1924, as amended (U.S.C., title 8, sec. 203), is hereby amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and (7) a representative of a foreign government in or to an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, or an alien officer or employee of such an international organization, and the family, attendants, servants, and employees of such a representative, officer, or employee".

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[19] 22 U.S.C. 288d.

[20] Sec. 3 of the Immigration Act of May 26, 1924 (8 U.S.C. 203) was repealed and replaced by sec. 101(a)(15) of the Immigration and Nationality Act of June 27, 1952. Public Law 82-414, 66 Stat. 167, 8 U.S.C. 1101(a)(15). Sec. 7(c) of the International Organizations Immunities Act, set forth in the text above, is now covered by Sec. 101(a)(15)(G) of the Immigration and Nationality Act of June 27, 1952 (8 U.S.C. 1101(a)(15)(G)), which provides:

"(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunity Act (55 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

"(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

"(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

"(iv) officers, or employees of such international organizations, and the members of their immediate families;

"(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;"

Sec. 101(a) (15) of the Immigration and Nationality Act of June 27, 1952 (8 U.S.C. 1101(a) (15)) establishes thirteen categories of "nonimmigrant" aliens (aliens admitted to the United States on a temporary basis, not for permanent residence here, and therefore not subject to quota restrictions). These are: Class A, Foreign government officials; Class B, Temporary visitors; Class C, Transit aliens (including aliens entitled to pass in transit to and from the United Nations headquarters in New York City); Class D, Crewmen; Class E, treaty traders and treaty investors; Class F, Students; Class G, International organizations personnel; Class H, Temporary workers; Class I, Foreign correspondents; Class J, Participants in a program designated by the Director of the United States Information Agency; Class K, Fiancee or fiance of a U.S. citizen entering to conclude a marriage; Class L, Temporary workers previously employed in U.S.; and Class M, Students in vocational training.

(d)[21] Section 15 of the Immigration Act approved May 26, 1924, as amended (U.S.C., title 8, sec. 215), is hereby amended to read as follows:

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[21] Sec. 15 of the Immigration Act of May 26, 1924 (8 U.S.C. 215) has been repealed and replaced by Secs. 102, 214 and 241 of the Immigration and Nationality Act of June 27, 1952 (8 U.S.C. 1102, 1184, 1251(e)). Sec. 7(d) of the International Organizations Immunities Act, set forth in the text above, is now covered by Sec. 102 of the Immigration and Nationality Act of June 27, 1952 (8 U.S.C. 1102), which states:

"Sec. 102. Except as otherwise provided in this Act, for so long as they continue in the nonimmigrant classes enumerated in this section, the provisions of this Act relating to ineligibility to receive visas and the exclusion or deportation of aliens shall not be construed to apply to nonimmigrants—

"(1) within the class described in paragraph (15)(A)(i) of section 101(a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15)(A)(i), and, under such rules and regulations as the President may deem to be necessary the provisions of paragraph (27) of section 212(a);

"(2) within the class described in paragraph (15)(G)(i) of section 101(a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15)(G)(i), and the provisions of paragraph (27) of section 212(a); and

"(3) within the classes described in paragraphs (15)(A)(ii), (15)(G)(ii), (15)(G)(iii), or (15)(G)(iv) of section 101(a), except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraphs, and the provisions of paragraphs (27) and (29) of section 212(a)."

Sec. 212 of the Immigration and Nationality Act of June 27, 1952 (8 U.S.C. 1182), sets forth the various classes of aliens to be excluded from admission to the United States. Paragraph (27) of sec. 212(a) (8 U.S.C. 1182(a)) provides:

"(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;"

Par. (29) of sec. 212(a) (8 U.S.C. 1182(a)(29)) provides:

"(29) Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry, (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means, or (C) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950;"

It will be noted that Sec. 102 (8 U.S.C. 1102) covers class (15)(G) (i), (ii), (iii) and (iv) cases of international organizations personnel, but does not cover (15)(G)(v) cases (attendants, servants, and personal employees of such personnel, and members of the immediate families of such attendants, servants, and personal employees). Sec. 212 (8 U.S.C. 1182) setting forth various grounds of exclusion of aliens such as mental, physical, or moral defects, therefore applies to this class of personnel. Sec. 212(d)(2) (8 U.S.C. 1182(d)(2)) contains this exception:

"(2) The provisions of paragraph (28) of subsection (a) of this section shall not be applicable to any alien who is seeking to enter the United States temporarily as a nonimmigrant under paragraph (15)(A)(iii) or (15)(G)(v) of section 101(a)."

Sec. 212(a)(28) (8 U.S.C. 1182(a)(28)) lists various classes of aliens who are excluded because of subversive activities and associations. These classes include: anarchists; opponents of all organized governments; members of the Communist Party of the United States; advocates of world communism; advocates of the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; etc.

In this connection, note should be made of Sec. 212(d) (3) and (6) (8 U.S.C. 1182(d) (3) and (6)). Par. (3) provides:

"(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under one or more of the paragraphs enumerated in subsection (a) (other than pars. (27), (29), and (33)), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under one or more of the paragraphs enumerated in subsection (a) (other than pars. (27), (29), and (33)), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General."

Par. (6) provides:

"(6) The Attorney General shall proscribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this subsection.

"Sec. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (1), (2), (3), (4), (5), (6), or (7) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3 and subdivision (e) of section 4, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States: *Provided,* That no alien who has been, or who may hereafter be, admitted into the United States under clause (1) or (7) of section 3, as an official of a foreign government, or as a member of the family of such official, or as a representative of a foreign government in or to an international organization, or as a member of the family of such representative, officer, or employee, shall be required to depart from the United States without the approval of the Secretary of State."

Sec. 8.[22] (a) No person shall be entitled to the benefits of this title unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance as a prospective representative, officer, or employee; or (3) is a member of the family or suite or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

(b) Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this title is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this title, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

Sec. 9.[23] The privileges, exemptions, and immunities of international organizations and of their officers and employees, and mem-

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Attention is also called to Sec. 214 (a) and (b) (8 U.S.C. 1184 (a) and (b)), which provide:

"SEC. 214. (a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States.

"(b) Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b)."

[22] 22 U.S.C. 288e.

[23] 22 U.S.C. 288f.

bers of their families, suites, and servants, provided for in this title, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided,* That nothing contained in this title shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

Sec. 10. This title may be cited as the "International Organizations Immunities Act."

Sec. 11.[24] The provisions of this title may be extended to the European Space Research Organization in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

Sec. 12.[25] The provisions of this title may be extended to the Organization of African Unity and may continue to be extended to the International Labor Organization[26] in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

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[24] Sec. 11 was added by Public Law 89-353. (80 Stat. 5).

[25] Sec. 12 was added by Public Law 93-161 (87 Stat. 635).

[26] This reference to the International Labor Organization was added by Sec. 404 of the Department of State Authorization Act, fiscal year 1980-81 (Public Law 96-60; 93 Stat. 403).

b. Extending Certain Privileges to Representatives of Member States on the Council of the Organization of American States

Public Law 82-486 [S. 2042], 66 Stat. 516; 22 U.S.C. 288g, approved July 10, 1952, as amended by Public Law 93-149 [H.R. 5943], 87 Stat. 560, approved November 7, 1973

AN ACT To extend certain privileges to the representatives of member states and permanent observers to the Organization of American States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, under such terms and conditions as he shall determine, the President is hereby authorized to extend, or to enter into an agreement extending, to the representatives of member states (other than the United States) to the Organization of American States and to permanent observers to the Organization of American States, and to members of the staff of said representatives and permanent observers, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys accredited to the United States.[1]

[1] As amended and restated by Public Law 93-149. The text formerly read: "That, under such terms and conditions as he shall determine, the President is hereby authorized to extend, or to enter into an agreement extending, to the representatives of member states (other than the United States) on the Council of the Organization of American States, and to members of their staffs, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys accredited to the United States."

c. Extending Diplomatic Privileges to the Mission of the Commission of the European Communities

Public Law 92-499 [S. 2700], 86 Stat. 815, approved October 18, 1972

AN ACT To extend diplomatic privileges and immunities to the Mission to the United States of America of the Commission of the European Communities and to members thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, under such terms and conditions as he shall determine and consonant with the purposes of this Act, the President is authorized to extend, or to enter into an agreement extending, to the Mission to the United States of America of the Commission of the European Communities, and to members thereof, the same privileges and immunities subject to corresponding conditions and obligations as are enjoyed by diplomatic missions accredited to the United States and by members thereof.

d. Act for the Protection of Foreign Officials and Official Guests of the United States[1]

Public Law 92-539 [H.R. 15883], 86 Stat. 1070, approved October 24, 1972

AN ACT To amend title 18, United States Code, to provide for expanded protection of foreign officials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act for the Protection of Foreign Officials and Official Guests of the United States".

STATEMENT OF FINDINGS AND DECLARATION OF POLICY

Sec. 2. The Congress recognizes that from the beginning of our history as a nation, the police power to investigate, prosecute, and punish common crimes such as murder, kidnapping, and assault has resided in the several States, and that such power should remain with the States.

The Congress finds, however, that harassment, intimidation, obstruction, coercion, and acts of violence committed against foreign officials or their family members in the United States or against official guests of the United States adversely affect the foreign relations of the United States.

Accordingly, this legislation is intended to afford the United States jurisdiction concurrent with that of the several States to proceed against those who by such acts interfere with its conduct of foreign affairs.

TITLE I—MURDER OR MANSLAUGHTER OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

Sec. 101. Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1116.[2] Murder or manslaughter of foreign officials, official guests, or internationally protected persons

"(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that any such person who if found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person

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[1] While this act itself has never been amended, the various sections of ch. 51 of title 18, U.S.C., contained herein were substantially amended by the Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons (Public Law 94-467; 90 Stat. 1997). These amendments have been incorporated in the text found in this Act. See also sec. 878 of chapter 41 of title 18, U.S.C., which concerns threats and extortion against foreign officials, official guests, or internationally protected persons (page 613 of text).

[2] Sec. 1116, as added by this act, was amended and restated by sec. 2 of Public Law 94-467.

who is found guilty of attempted murder shall be imprisoned for not more that twenty years.

"(b) For the purposes of this section:

"(1) 'Family' includes (a) a spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

"(2) 'Foreign government' means the government of a foreign country, irrespective of recognition by the United States.

"(3) 'Foreign official' means—

"(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

"(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

"(4) 'Internationally protected person' means—

"(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

"(B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

"(5) 'International organization' means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288).

"(6) 'Official guest' means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

"(c) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

"(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.".

"§ 1117. Conspiracy to murder

"If two or more persons conspire to violate section 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

Sec. 102. The analysis of chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new items:

"1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons." [3]

"1117. Conspiracy to murder."

TITLE II—KIDNAPING

Sec. 201. Section 1201 of title 18, United States Code, is amended to read as follows:

"§ 1201. Kidnaping

"(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

"(1) the person is willfully transported in interstate or foreign commerce;

"(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

"(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101(32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(32)); or

"(4) [4] the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title,"; and

"(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

"(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

"(d) [5] Whoever attempts to violate subsection (a)(4) shall be punished by imprisonment for not more than twenty years.

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[3] The words "internationally protected persons" were added to this analysis by sec. 3 of Public Law 94-467.

[4] Par. (4) was amended and restated by sec. 4(a) of Public Law 94-467.

[5] Subsecs. (d), (e), and (f) were added by sec. 4(b) of Public Law 94-467.

"(e)[5] If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of section 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

"(f)[5] In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.".

Sec. 202. The analysis of chapter 55 of title 18, United States Code, is amended by deleting

"1201. Transportation.",

and substituting the following:

"1201. Kidnaping."

TITLE III—PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

Sec. 301. Section 112 of title 18, United States Code, is amended to read as follows:

"§ 112.[6] Protection of foreign officials, official guests, and internationally protected persons

"(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) Whoever willfully—

"(1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;

"(2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or

"(3) within the United States but outside the District of Columbia and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official

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[6] Sec. 112 was amended and restated by sec. 5 of Public Law 94-467.

business or for diplomatic, consular, or residential purposes by—

"(A) a foreign government, including such use as a mission to an international organization;

"(B) an international organization;

"(C) a foreign official; or

"(D) an official guest;

congregates with two or more other persons with intent to violate any other provision of this section;

shall be fined not more than $500 or imprisoned not more than six months, or both.

"(c) For the purpose of this section 'foreign government', 'foreign official', 'internationally protected person', 'international organization', and 'official guest' shall have the same meanings as those provided in section 1116(b) of this title.

"(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

"(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

"(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection (a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding.".

Sec. 302. The analysis of chapter 7 of title 18, United States Code, is amended by deleting

"112. Assaulting certain foreign diplomats and other official personnel."

and adding at the beginning thereof the following new item:

"112. Protection of foreign officials, official guests, and internationally protected persons.".[7]

TITLE IV—PROTECTION OF PROPERTY OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Sec. 401. Chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 970. Protection of property occupied by foreign governments

"(a) Whoever willfully injures, damages, or destroys, or attempts to injure, damage, or destroy, any property, real or personal, located within the United States and belonging to or utilized or occupied by any foreign government or international organization, by a

[7] Sec. 6 of Public Law 94-467 added the words "and internationally protected persons" to this analysis.

foreign official or official guest, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(b)[8] Whoever, willfully with intent to intimidate, coerce, threaten, or harass—

"(1) forcibly thrusts any part of himself or any object within or upon that portion of any building or premises located within the United States, which portion is used or occupied for official business or for diplomatic, consular, or residential purposes by—

"(A) a foreign government, including such use as a mission to an international organization;

"(B) an international organization;

"(C) a foreign official; or

"(D) an official guest; or

"(2) refuses to depart from such portion of such building or premises after a request—

"(A) by an employee of a foreign government or of an international organization, if such employee is authorized to make such request by the senior official of the unit of such government or organization which occupies such portion of such building or premises;

"(c)[8] For the purpose of this section 'foreign government', 'foreign official', 'international organization', and 'official guest' shall have the same meanings as those provided in section 116(b) of this title."

Sec. 402. The analysis of chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"970. Protection of property occupied by foreign governments."

Sec. 3. Nothing contained in this Act shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia on the same subject matter, nor to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia.

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[8] Sec. 7 of Public Law 94-467 added a new subsec. (b), amended and restated the old subsec. (b), and redesignated it as subsec. (c).

e. Executive Protective Service

Partial text of Public Law 80-771 [H.R. 6412], 62 Stat. 672, approved June 25, 1948; as amended by Public Law 87-481 [H.R. 11261], 76 Stat. 95, approved June 8, 1962, Public Law 91-217 [H.R. 14944], 84 Stat. 74, approved March 19, 1970; Public Law 93-522 [H.R. 16136], 88 Stat. 1764, approved December 27, 1974; Public Law 94-196 [H.R. 11184], 89 Stat. 1109, approved December 31, 1975; and by Public Law 95-570 [H.R. 11003], 92 Stat. 2445 at 2451, approved November 2, 1978

AN ACT To codify and enact into law Title 3 of the United States Code, entitled "The President".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 3 of the United States Code, entitled "The President", is codified and enacted into positive law and may be cited as "3 U.S.C., §——", as follows:

* * * * * * *

CHAPTER 3.—PROTECTION OF THE PRESIDENT; THE EXECUTIVE PROTECTIVE SERVICE

§ 202. Executive Protective Service; establishment, control, and supervision; privileges, powers, and duties

There is hereby created and established a permanent police force, to be known as the "Executive Protective Service". Subject to the supervision of the Secretary of the Treasury, the Executive Protective Service shall perform such duties as the Director, United States Secret Service, may prescribe in connection with the protection of the following: (1) the White House in the District of Columbia; (2) any building in which Presidential offices are located; (3) the President and members of his immediate family; (4) foreign diplomatic missions located in the metropolitan area of the District of Columbia; (5) the temporary official residence of the Vice President and grounds in the District of Columbia; (6) the Vice President and members of his immediate family; (7) foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) in the United States where there are located twenty or more such missions headed by full-time officers, except that such protection shall be provided only (A) on the basis of extraordinary protective need, (B) upon request of the affected metropolitan area, and (C) when the extraordinary protective need arises in association with a visit to or occurs at a permanent mission to an international organization of which the United States is a member or an observer mission invited to participate in the work of such organization, provided that such protection may be extended at places of temporary domicile in connection with such a visit; and (8) foreign diplomatic missions located in such other areas in the United States, its territories and possessions, as the President, on a case-

by-case basis, may direct. The members of such force shall possess privileges and powers similar to those of the members of the Metropolitan Police of the District of Columbia.

f. Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons [1]

Partial text of Public Law 94-467 [H.R. 15552], 90 Stat. 1997, approved October 8, 1976

AN ACT To amend title 18, United States Code, to implement the "Convention To Prevent and Punish the Act of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance" and the "Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons".

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Sec. 8. Chapter 41 of title 18, United States Code, is amended by adding a new section 878 as follows:

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

"(a) Whoever knowingly and willfully threatens to violate section 112, 1116, or 1201 by killing, kidnapping, or assaulting a foreign official, official guest, or internationally protected person shall be fined not more than $5,000 or imprisoned not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

"(b) Whoever in connection with any violation of subsection (a) or actual violation of section 112, 1116, or 1201 makes any extortionate demand shall be fined not more than $20,000 or imprisoned not more than twenty years, or both.

"(c) For the purpose of this section 'foreign official', 'internationally protected person', and 'official guest' shall have the same meanings as those provided in section 1116(a) of this title.

"(d) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).".

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[1] Except for sec. 8 through 11, this Act amends portions of title 18, U.S.C., which were also amended by the Act for the Protection of Foreign Officials and Official Guests of the United States (Public Law 92-539). All amendments made by this act to sections contained in Public Law 92-539 are incorporated in the text of the latter. See page 605 for complete text.

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Sec. 9. The analysis of chapter 41 of title 18, United States Code, is amended by inserting at the end thereof the following new item:

"878. Threat and extortion against foreign officials, official guests, and internationally protected persons.".

Sec. 10. Nothing contained in this Act shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia, on the same subject matter, not to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia, including the obligation of all persons having official law enforcement powers to take appropriate action, such as effecting arrests, for Federal as well as non-Federal violations.

Sec. 11. Section 11 of title 18, United States Code, is amended by inserting after the word "title" the words "except in sections 112, 878, 970, 1116, and 1201".

g. Foreign Sovereign Immunities Act of 1976

Public Law 94-583 [H.R. 11315], 90 Stat. 2891, approved October 21, 1976

AN ACT To define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Sovereign Immunities act of 1976".

Sec. 2. (a) That chapter 85 of title 28, United States Code, is amended by inserting immediately before section 1331 the following new section:

"§ 1330. Actions against foreign states

"(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

"(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

"(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.".

(b) By inserting in the chapter analysis of that chapter before—

"1331. Federal question; amount in controversy; costs."

the following new item:

"1330. Action against foreign states.".

Sec. 3. That section 1332 of title 28, United States Code, is amended by striking subsections (a) (2) and (3) and substituting in their place the following:

"(2) citizens of a State and citizens or subjects of a foreign state;

"(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

"(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.".

Sec. 4. (a) That title 28, United States Code, is amended by inserting after chapter 95 the following new chapter:

"Chapter 97.—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

"Sec.
"1602. Findings and declaration of purpose.
"1603. Definitions.
"1604. Immunity of a foreign state from jurisdiction.
"1605. General exceptions to the jurisdictional immunity of a foreign state.
"1606. Extent of liability.
"1607. Counterclaims.
"1608. Service; time to answer default.
"1609. Immunity from attachment and execution of property of a foreign state.
"1610. Exceptions to the immunity from attachment or execution.
"1611. Certain types of property immune from execution.

"§ 1602. Findings and declaration of purpose

"The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

"§ 1603. Definitions

"For purposes of this chapter—

"(a) A 'foreign state', except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

"(b) An 'agency or instrumentality of a foreign state' means any entity—

"(1) which is a separate legal person, corporate or otherwise, and

"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

"(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (d) of this title, nor created under the laws of any third country.

"(c) The 'United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

"(d) A 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

"(e) A 'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such state and having substantial contact with the United States.

"§ 1604. Immunity of a foreign state from jurisdiction

"Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

"§ 1605. General exceptions to the jurisdictional immunity of a foreign state

"(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

"(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

"(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

"(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

"(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

"(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

"(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

"(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

"(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admi-

ralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided,* That—

"(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit—unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

"(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b)(1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided,* That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

"§ 1606. Extent of liability

"As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

"§ 1607. Counterclaims

"In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

"(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

"(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

"(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

"§ 1608. Service; time to answer; default

"(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

"(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

"(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

"(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

"(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a 'notice of suit' shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

"(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

"(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

"(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention or service on judicial documents; or

"(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

"(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

"(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

"(C) as directed by order of the court consistent with the law of the place where service is to be made.

"(c) Service shall be deemed to have been made—

"(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

"(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

"(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

"(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

"§ 1609. Immunity from attachment and execution of property of a foreign state

"Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

"§ 1610. Exceptions to the immunity from attachment or execution

"(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

"(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

"(2) the property is or was used for the commercial activity upon which the claim is based, or

"(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

"(4) the execution relates to a judgment establishing rights in property—

"(A) which is acquired by succession or gift, or

"(B) which is immovable and situated in the United States: *Provided,* That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

"(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

"(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

"(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

"(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

"(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

"(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section if—

"(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

"(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

"§ 1611. Certain types of property immune from execution

"(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process im-

peding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

"(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

"(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

"(2) the property is, or is intended to be, used in connection with a military activity and

"(A) is of a military character, or

"(B) is under the control of a military authority or defense agency."

(b) That the analysis of "PART IV.—JURISDICTION AND VENUE" of title 28, United States Code, is amended by inserting after—

"95. Customs Court.",

the following new item:

"97. Jurisdictional Immunities of Foreign States.".

Sec. 5. That section 1391 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

"(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

"(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

"(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

"(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.".

Sec. 6. That section 1441 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time

limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.".

Sec. 7. If any provision of this Act or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 8. This Act shall take effect ninety days after the date of its enactment.

h. Diplomatic Relations Act

Public Law 95-393 [H.R. 7819], 92 Stat. 808, approved September 30, 1978 as amended by Public Law 97-241 [Department of State Authorization Act, Fiscal Years 1982 and 1983; S. 1193], 96 Stat. 273 at 290, approved August 24, 1982 [1]

AN ACT To complement the Vienna Convention on Diplomatic Relations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Diplomatic Relations Act".

DEFINITIONS

Sec. 2. As used in this Act—

(1) the term "members of a mission" means—

(A) [2] the head of a mission and those members of a mission who are members of the diplomatic staff or who, pursuant to law, are granted equivalent privileges and immunities,

(B) members of the administrative and technical staff of a mission, and

(C) members of the service staff of a mission,

as such terms are defined in Article 1 of the Vienna Convention;

(2) the term "family" means—

(A) the members of the family of a member of a mission described in paragraph (1)(A) who form part of his or her household if they are not nationals of the United States, and

(B) the members of the family of a member of a mission described in paragraph (1)(B) who form part of his or her household if they are not nationals or permanent residents of the United States.

within the meaning of Article 37 of the Vienna Convention;

(3) the term "mission" includes missions within the meaning of the Vienna convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention; and

(4) the term "Vienna Convention" means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S.

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[1] 22 U.S.C. 254a-254e.

[2] Sec. 203(b)(1) of Public Law 97-241 (96 Stat. 290) amended and restated subpar. (A). It formerly read as follows: "(A) the head of a mission and members of the diplomatic staff of a mission,".

numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, 1972.

ESTABLISHMENT OF THE VIENNA CONVENTION AS THE UNITED STATES LAW ON DIPLOMATIC PRIVILEGES AND IMMUNITIES

Sec. 3. (a)(1) Sections 4063 through 4066 of the Revised Statutes of the United States (22 U.S.C. 252–254) are repealed.

(2) The section analysis of title XLVII of the Revised Statutes of the United States is amended by striking out the items relating to sections 4063 through 4066.

(b)[3] With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention.

AUTHORITY TO EXTEND MORE FAVORABLE OR LESS FAVORABLE TREATMENT

Sec. 4.[4] The President may, on the basis of reciprocity and under such terms and conditions as he may determine, specify privileges and immunities for the mission,[5] the members of the mission, their families, and the diplomatic couriers[6] which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention.

DISMISSAL OF ACTIONS AGAINST INDIVIDUALS ENTITLED TO IMMUNITY

Sec. 5. Any action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations, under section 3(b) or 4 of this Act, or under any other laws extending diplomatic privileges and immunities, shall be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure.

REQUIREMENT FOR LIABILITY INSURANCE

Sec. 6.[4] (a) Each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, shall comply with any requirement imposed by the regulations promulgated by the President pursuant to subsection (b).

(b) The President shall, by regulation, establish liability insurance requirements to be met by each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Na-

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[3] Sec. 203(b)(2) of Public Law 97-241 (96 Stat. 291) amended and restated subsec. (b). It formerly read as follows: "(b) Members of the mission of a sending state which has not ratified the Vienna Convention, their families, and the diplomatic couriers of such state, shall enjoy the privileges and immunities specified in the Vienna Convention."

[4] Executive Order 12101 (Nov. 17, 1978; 43 F.R. 54195) designated the Secretary of State to perform the functions specified in secs. 4 and 6.

[5] Reference to the mission was added by sec. 203(b)(3)(A) of Public Law 97-241 (96 Stat. 291).

[6] The words "of any sending state", which previously appeared at this point, were struck out by sec. 203(b)(3)(B) of Public Law 97-241 (96 Stat. 291).

tions of February 13, 1946, relating to risks arising from the operation in the United States of any motor vehicle, vessel, or aircraft.

(c) The President shall take such steps as he may deem necessary to insure that each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, who operate motor vehicles, vessels, or aircraft in the United States comply with the requirements established pursuant to subsection (b).

Sec. 7. (a) That chapter 85 of title 28, United States Code, is amended by the addition of the following new section:

"§ 1364. Direct actions against insurers of members of diplomatic missions and their families

"(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is a member of a mission (as defined in the Vienna Convention on Diplomatic Relations) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

"(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.".

(b) The chapter analysis of chapter 85 of title 28, United States Code, is amended by adding after the item relating to section 1363 the following new item:

"1364. Direct actions against insurers of members of diplomatic missions and their families.".

CONFORMING AMENDMENTS TO TITLE 28

Sec. 8. (a)(1) Section 1351 of title 28, United States Code, is amended to read as follows:

"§ 1351. Consuls, vice consuls, and members of a diplomatic mission as defendant

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against—

"(1) consuls or vice consuls of foreign states; or

"(2) members of a mission or members of their families (as such terms are defined in section 2 of the Diplomatic Relations Act).".

(2) The chapter analysis of chapter 85 of such title 28 is amended by amending the item relating to section 1351 to read as follows:

"1351. Consuls, vice consuls, and members of a diplomatic mission as defendant.".

(b)(1) Section 1251(a) of such title 28 is amended to read as follows:

"(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.".

(2) Section 1251(b)(1) of such title 28 is amended by striking out "brought by" and all that follows through "consuls or" and inserting in lieu thereof "to which ambassadors, other public ministers, consuls, or".

EFFECTIVE DATE

Sec. 9. This Act shall take effect at the end of the ninety-day period beginning on the date of its enactment.

i. Protection of Foreign Diplomatic Missions by the U.S. Secret Service

Public Law 97-418 [H.R. 6254], 96 Stat. 2089, approved January 4, 1983

AN ACT To amend title 3, United States Code, to clarify the function of the United States Secret Service Uniformed Division with respect to certain foreign diplomatic missions in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 202(7)(C) of title 3, United States Code,[1] is amended by inserting "may be provided for motorcades and at other places associated with such a visit and" after "protection".

(b) Section 208(b) of title 3, United States Code,[2] is amended to read as follows:

"(b) There is authorized to be appropriated, in addition to such sums as have been heretofore appropriated under this section—

"(1) $7,000,000 for each fiscal year beginning after September 30, 1982, for the payment of reimbursement obligations entered into under subsection (a) after such date; and

"(2) $17,700,000 for the payment of reimbursement obligations entered into under subsection (a) before October 1, 1982. Amounts appropriated under this subsection shall remain available until expended.".

Sec. 2. The amendments made by the first section of this Act shall take effect on the date of enactment of this Act, except that no amount authorized to be appropriated by the amendment made by subsection (b) of the first section of this Act may be made available for use or obligation prior to October 1, 1982.

Sec. 3. In order to assure effective security at the United States mission to the United Nations, and to promote efficient use of Federal security resources, the Secretary of the Treasury and the Secretary of State shall consult with the Secretary of the Navy with regard to placement of Marine security guard services within such mission and shall report thereon to the Congress not later than sixty days after the date of enactment of this Act.

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[1] Sec. 202 of title 3, U.S.C., establishes, among other things, the powers and duties of the U.S. Secret Service Uniformed Division. Phrase (7)(C) of such section, as amended by this Act, stipulates U.S. Secret Service protection of the following:

"(7) foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) in the United States where there are located twenty or more such missions headed by full-time officers, except that such protection shall be provided only * * * (C) when the extraordinary protective need arises in association with a visit to or occurs at a permanent mission to an international organization of which the United States is a member or an observer mission invited to participate in the work of such organization, provided that such protection may be provided for motorcades and at other places associated with such a visit and may be extended at places of temporary domicile in connection with such a visit."

[2] Sec. 208(b) of title 3, U.S.C., provides for the authorization of appropriations to reimburse state and local governments for costs associated with the use of state and local government facilities, personnel, services, and equipment in connection with visits to foreign missions in the United States, as described in sec. 202(7)(C) of such title. See footnote 1 for text of sec. 202(7)(C).

K. WAR POWERS, COLLECTIVE SECURITY, AND RELATED MATERIAL

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1. War Powers

a. War Powers Resolution

Public Law 93-148 [H.J. Res. 542], 87 Stat. 555, 50 U.S.C. 1541-1548, passed over President's veto November 7, 1973

JOINT RESOLUTION Concerning the war powers of Congress and the President.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace of waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or

required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of

such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to

constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstances is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

b. National Emergencies Act, as amended [1]

Public Law 94-412 [H.R. 3884], 90 Stat. 1255, approved September 14, 1976, as amended by Public Law 95-223 [H.R. 7738], 91 Stat. 1625, approved December 28, 1977

AN ACT To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

Sec. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

Sec. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

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[1] 50 U.S.C. 1601-1651.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c)(1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been ap-

pointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Sec. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Sec. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declarations, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sec. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal;

Sec. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) * * * [Repealed—1977] [2]

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

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[2] Par. (1), which contained a reference to sec. 5(b) of the Trading With the Enemy Act, was repealed by sec. 101(d) of Public Law 95-223 (91 Stat. 1625).

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

2. Cuban Resolution

Public Law 87-733 [S.J. Res. 230], 76 Stat. 697, approved October 3, 1962

JOINT RESOLUTION Expressing the determination of the United States with respect to the situation in Cuba.

Whereas President James Monroe, announcing the Monroe Doctrine in 1823, declared that the United States would consider any attempt on the part of European powers to "extend their system to any portion of this hemisphere as dangerous to our peace and safety"; and

Whereas in the Rio Treaty of 1947 the parties agreed that "an armed attack by any State against an American State shall be considered as an attack against all the American States, and, consequently, each one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations"; and

Whereas the Foreign Ministers of the Organization of American States at Punta del Este in January 1962 declared: "the present Government of Cuba has identified itself with the principles of Marxist-Leninist ideology, has established a political, economic, and social system based on that doctrine, and accepts military assistance from extracontinental Communist powers, including even the threat of military intervention in America on the part of the Soviet Union"; and

Whereas the International Communist movement has increasingly extended into Cuba its political, economic, and military sphere of influence: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States is determined—

(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination.

3. Middle East Resolutions

a. Resolution to Promote Peace and Stability in the Middle East

Public Law 85-7 [H.J. Res. 117], 71 Stat. 5, approved March 9, 1957, as amended by the Foreign Assistance Act of 1961, Public Law 87-195 [S. 1983], 75 Stat. 424, approved September 4, 1961 [1]

JOINT RESOLUTION To promote peace and stability in the Middle East.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

Sec. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided,* That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

Sec. 3. The President is hereby authorized to use during the balance of fiscal year 1957 for economic and military assistance under this joint resolution not to exceed $200,000,000 from any appropriation now available for carrying out the provisions of the Mutual Security Act of 1954, as amended, in accord with the provisions of such Act: *Provided,* That, whenever the President determines it to be important to the security of the United States, such use may be under the authority of section 401(a) of the Mutual Security Act of 1954, as amended (except that the provisions of section 105(a) thereof shall not be waived), and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957: *Provided, further,* That obligations incurred in carrying out the purposes of the first sentence of section 2 of this joint resolution shall be paid only out of appropriations for military assistance, and obligations incurred in carrying out the purposes of the first section of this joint resolution shall be paid only out of appropriations other than those for military assistance. This authorization is in addition to other existing authorizations with respect to the use of such appropriations. None of the additional authorizations contained in this

[1] 22 U.S.C. 1961-1965.

section shall be used until fifteen days after the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committees on Appropriations of the Senate and the House of Representatives and, when military assistance is involved, the Committees on Armed Services of the Senate and the House of Representatives have been furnished a report showing the object of the proposed use, the country for the benefit of which such use is intended, and the particular appropriation or appropriations for carrying out the provisons of the Mutual Security Act of 1954, as amended, from which the funds are proposed to be derived: *Provided,* That funds available under this section during the balance of fiscal year 1957 shall, in the case of any such report submitted during the last fifteen days of the fiscal year, remain available for use under this section for the purposes stated in such report for a period of twenty days following the date of submission of such report. Nothing contained in this joint resolution shall be construed as itself authorizing the appropriation of additional funds for the purpose of carrying out the provisions of the first section or of the first sentence of section 2 of this joint resolution.

Sec. 4. The President should continue to furnish facilities and military assistance, within the provisions of applicable law and established policies, to the United Nations Emergency Force in the Middle East, with a view to maintaining the truce in that region.

Sec. 5. The President shall whenever appropriate[2] report to the Congress his action hereunder.

Sec. 6. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress.

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[2] Sec. 705 of the Foreign Assistance Act of 1961, Public Law 87-195 (Stat. 463), substituted the words "whenever appropriate" in lieu of the words "within the months of January and July of each year".

b. Multinational Force and Observers Participation Resolution[1]

Public Law 97-132 [S. J. Res. 100], 95 Stat. 1693, approved December 29, 1981

A JOINT RESOLUTION To authorize the participation of the United States in a multinational force and observers to implement the Treaty of Peace between Egypt and Israel.

Whereas the Treaty of Peace between Egypt and Israel signed on March 26, 1979, calls for the supervision of security arrangements to be undertaken by United Nations forces and observers; and

Whereas the United Nations has been unable to assume those responsibilities at this time; and

Whereas a Protocol signed on August 3, 1981, by the Government of the Arab Republic of Egypt and the Government of the State of Israel provides for the creation of an alternative Multinational Force and Observers to implement the Treaty of Peace; and

Whereas the Government of the Arab Republic of Egypt and the Government of the State of Israel have requested that the United States participate in the Multinational Force and Observers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This joint resolution may be cited as the "Multinational Force and Observers Participation Resolution".

STATEMENT OF POLICY

Sec. 2. The Congress considers the establishment of the Multinational Force and Observers to be an essential stage in the development of a comprehensive settlement in the Middle East. The Congress enacts this resolution with the hope and expectation that establishment of the Multinational Force and Observers will assist Egypt and Israel in fulfilling the Camp David accords and bring about the establishment of a self-governing authority in order to provide full autonomy in the West Bank and Gaza.

PARTICIPATION OF UNITED STATES PERSONNEL IN THE MULTINATIONAL FORCE AND OBSERVERS

Sec. 3. (a)(1) Subject to the limitations contained in this resolution, the President is authorized to assign, under such terms and conditions as he may determine, members of the United States

[1] 22 U.S.C. 3421-3426.

Armed Forces to participate in the Multinational Force and Observers.

(2) The Congress declares that the participation of the military personnel of other countries in the Multinational Force and Observers is essential to maintain the international character of the peacekeeping function in the Sinai: Accordingly—

(A) before the President assigns or details members of the United States Armed Forces to the Multinational Force and Observers, he shall notify the Congress of the names of the other countries that have agreed to provide military personnel for the Multinational Force and Observers, the number of military personnel to be provided by each country, and the functions to be performed by such personnel; and

(B) if a country withdraws from the Multinational Force and Observers with the result that the military personnel of less than four foreign countries remain, every possible effort must be made by the United States to find promptly a country to replace that country.

(3) Members of the United States Armed Forces, and United States civilian personnel, who are assigned, detailed or otherwise provided to the Multinational Force and Observers may perform only those functions or responsibilities which are specified for United Nations Forces and Observers in the Treaty of Peace and in accordance with the Protocol.

(4) The number of members of the United States Armed Forces who are assigned or detailed by the United States Government to the Multinational Force and Observers may not exceed 1,200 at any one time.

(b) Subject to the limitations contained in this resolution, the President is authorized to provide, under such terms and conditions as he may determine, United States civilian personnel to participate as observers in the Multinational Force and Observers.

(c) The status of United States Government personnel assigned to the Multinational Force and Observers under subsection (a)(1) or (b) of this section shall be as provided in section 629 of the Foreign Assistance Act of 1961.

UNITED STATES CONTRIBUTIONS TO COSTS

Sec. 4. (a) In accordance with the agreement set forth in the exchanges of letters between the United States and Egypt and between the United States and Israel which were signed on August 3, 1981, the United States share of the costs of the Multinational Force and Observers—

(1) shall not exceed 60 percent of the budget for the expenses connected with the establishment and initial operation of the Multinational Force and Observers during the period ending September 30, 1982; and

(2) shall not exceed 33⅓ percent of the budget for the annual operating expenses of the Multinational Force and Observers for each financial year beginning after that date.

(b)(1) There are authorized to be appropriated to the President to carry out chapter 6 of part II of the Foreign Assistance Act of 1961, in addition to amounts otherwise available to carry out that chap-

ter, $125,000,000 for the fiscal year 1982 for use in paying the United States contribution to the budget of the Multinational Force and Observers. Amounts appropriated under this subsection [2] are authorized to remain available until expended.

(2) Expenditures made pursuant to section 138 of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1982, and for other purposes", approved October 1, 1981 (Public Law 97-51), or pursuant to any subsequent corresponding provision applicable to the fiscal year 1982, shall be charged to the appropriation authorized by this subsection.

(c) Unless required by law, reimbursements to the United States by the Multinational Force and Observers shall be on the basis of identifiable costs actually incurred as a result of requirements imposed by the Multinational Force and Observers, and shall not include administrative surcharges.

NONREIMBURSED COSTS

Sec. 5. (a) Any agency of the United States Government is authorized to provide administrative and technical support and services to the Multinational Force and Observers, without reimbursement and upon such terms and conditions as the President may direct, when the provision of such support or services would not result in significant incremental costs to the United States.

(b) The provision by the United States to the Multinational Force and Observers under the authority of this resolution or any other law of any property, support, or services, including the provision of military and civilian personnel under section 3 of this resolution, on other than a reimbursable basis, shall be kept to a minimum.

(c) The President may provide military training to members of the armed forces of other countries participating in the Multinational Force and Observers.

REPORTS TO THE CONGRESS [3]

Sec. 6. (a) Not later than April 30, 1982, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a detailed written report with respect to the period ending two weeks prior to that date which contains the information specified in subsection (b).

(b) Not later than January 15 of each year (beginning in 1983), the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a written report which describes—

(1) the activities performed by the Multinational Force and Observers during the preceding year;

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[2] Sec. 138 of Public Law 97-51 (Continuing Appropriations for fiscal year 1982; 95 Stat. 967) provided $125 million in appropriations for U.S. participation in the Multinational Force and Observers.

[3] Pursuant of Executive Order 12361, the reporting functions required under this section were delegated to the Secretary of State. Such Executive Order further instructed the Secretary to consult with the Director of OMB, the Secretary of Defense, the Director of ACDA, the Assistant to the President for National Security Affairs, and the heads of other Executive agencies, as appropriate, in exercising this responsibility. See page 649 for complete text of Executive Order 12361.

(2) the composition of the Multinational Force and Observers, including a description of the responsibilities and deployment of the military personnel of each participating country;

(3) all costs incurred by the United States Government (including both normal and incremental costs), set forth by category, which are associated with the United States relationship with the Multinational Force and Observers and which were incurred during the preceding fiscal year (whether or not the United States was reimbursed for those costs), specifically including but not limited to—

(A) the costs associated with the United States units and personnel participating in the Multinational Force and Observers (including salaries, allowances, retirement and other benefits, transportation, housing, and operating and maintenance costs), and

(B) the identifiable costs relating to property, support, and services provided by the United States to the Multinational Force and Observers;

(4) the costs which the United States Government would have incurred in maintaining in the United States those United States units and personnel participating in the Multinational Force and Observers;

(5) amounts received by the United States Government from the Multinational Force and Observers as reimbursement;

(6) the types of property, support, or services provided to the Multinational Force and Observers by the United States Government, including identification of the types of property, support, or services provided on a nonreimbursable basis; and

(7) the results of any discussions with Egypt and Israel regarding the future of the Multinational Force and Observers and its possible reduction or elimination.

(c)(1) The reports required by this section shall be as detailed as possible.

(2) The information pursuant to subsection (b)(3) shall, in the case of costs which are not identifiable, be set forth with reasonable accuracy.

(3) The information with respect to any administrative and technical support and services provided on a nonreimbursed basis under section 5(a) of this resolution shall include a description of the types of support and services which have been provided and an estimate of both the total costs of such support and services and the incremental costs incurred by the United States with respect to such support and services.

STATEMENTS OF CONGRESSIONAL INTENT

Sec. 7. (a) Nothing in this resolution is intended to signify approval by the Congress of any agreement, understanding, or commitment made by the Executive branch other than the agreement to participate in the Multinational Force and Observers as set forth in the exchanges of letters between the United States and Egypt and between the United States and Israel which were signed on August 3, 1981.

(b) The limitations contained in this resolution with respect to United States participation in the Multinational Force and Observers apply to the exercise of the authorities provided by this resolution or provided by any other provision of law. No funds appropriated by the Congress may be obligated or expended for any activity which is contrary to the limitations contained in this resolution.

(c) Nothing in this resolution shall affect the responsibilities of the President or the Congress under the War Powers Resolution (Public Law 93–148).

DEFINITIONS

Sec. 8. As used in this resolution—

(1) the term "Multinational Force and Observers" means the Multinational Force and Observers established in accordance with the Protocol between Egypt and Israel signed on August 3, 1981, relating to the implementation of the security arrangements of the Treaty of Peace; and

(2) the term "Treaty of Peace" means the Treaty of Peace between the Arab Republic and Egypt and the State of Israel signed on March 26, 1979, including the Annexes thereto.

c. Executive Order 12361, April 27, 1982, 47 F.R. 18313

Multinational Force and Observers Reports

By the authority vested in me as President of the United States of America by the Multinational Force and Observers Participation Resolution (Public Law 97-132, 95 Stat. 1693) and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *Delegation of Functions.* The reporting function conferred upon the President by Section 6 of the Multinational Force and Observers Participation Resolution (22 U.S.C. 3425) is delegated to the Secretry of State.

Sec. 2. *Interagency Coordination.* In the exercise of the function conferred on the Secretary of State by Section 1 of this Order, the Secretary of State shall consult with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the United States Arms Control and Disarmament Agency, the Assistant to the President for National Security Affairs, and the heads of other Executive agencies as appropriate.

d. Implementing the United States Proposal for the Early-Warning System in Sinai

Public Law 94–110 [H.J. Res. 683] 89 Stat. 572, approved October 13, 1975 [1]

JOINT RESOLUTION To implement the United States proposal for the early-warning system in Sinai

Whereas an agreement signed on September 4, 1975, by the Government of the Arab Republic of Egypt and the Government of Israel may, when it enters into force, constitute a significant step toward peace in the Middle East;

Whereas the President of the United States on September 1, 1975, transmitted to the Government of the Arab Republic of Egypt and to the Government of Israel identical proposals for United States participation in an early-warning system, the text of which has been submitted to the Congress, providing for the assignment of no more than two hundred United States civilian personnel to carry out certain specified noncombat functions and setting forth the terms and conditions thereof;

Whereas that proposal would permit the Government of the United States to withdraw such personnel if it concludes that their safety is jeopardized or that continuation of their role is no longer necessary; and

Whereas the implementation of the United States proposal for the early-warning system in Sinai may enhance the prospect of compliance in good faith with the terms of the Egyptian-Israeli agreements and thereby promote the cause of peace: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to implement the "United States Proposal for the Early Warning System in Sinai" [2]: *Provided, however,* That United States civilian personnel assigned to Sinai under such proposal shall be removed immediately in the event of an outbreak of hostilities between Egypt and Israel or if the Congress by concurrent resolution determines that the safety of such personnel is jeopardized or that continuation of their role is no longer necessary. Nothing contained in this resolution shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

Sec. 2. Any concurrent resolution of the type described in the first section of this resolution which is introduced in either House

[1] 22 U.S.C. 2441 note.

[2] See vol. III, page 840 for text of the U.S. proposal.

of Congress shall be privileged in the same manner and to the same extent as a concurrent resolution of the type described in section 5(c) of Public Law 93-148 [3] is privileged under section 7 of such law.

Sec. 3. The United States civilian personnel participating in the early warning system in Sinai shall include only individuals who have volunteered to participate in such system.

Sec. 4. Whenever United States civilian personnel, pursuant to this resolution, participate in an early warning system, the President shall, so long as the participation of such personnel continues, submit written reports to the Congress periodically, but no less frequently than once every six months, on (1) the status, scope, and anticipated duration of their participation, and (2) the feasibility of ending or reducing as soon as possible their participation by substituting nationals of other countries or by making technological changes. The appropriate committees of the Congress shall promptly hold hearings on each report of the President and report to the Congress any findings, conclusions, and recommendations.

Sec. 5. The authority contained in this joint resolution to implement the "United States Proposal for the Early Warning System in Sinai" does not signify approval of the Congress of any other agreement, understanding, or commitment made by the executive branch.

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[3] 50 U.S.C. 1544, 1546. War Powers Resolution. See page 633 for text.

e. Executive Order 11896, January 13, 1976, 41 F.R. 2067 as amended by Executive Order 12150, July 23, 1979, 44 F.R. 43455; Executive Order 12227, July 22, 1980, 45 F.R. 49237; and by Executive Order 12357, April 6, 1982, 47 F.R. 15093

ESTABLISHING THE UNITED STATES SINAI SUPPORT MISSION

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Joint Resolution of October 13, 1975 (Public Law 94–110, 89 Stat. 572, 22 U.S.C. 2441 note), the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.), including but not limited to Sections 531, 621, 633, 901, and 903 thereof (22 U.S.C. 2346, 2381, 2393, 2443), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. (a) In accordance with the Foreign Assistance Act of 1961, as amended, and notwithstanding the provisions of Part I of Executive Order No. 10973, as amended, there is hereby established the United States Sinai Support Mission, hereinafter referred to as the Mission.

(b)[1] The Mission shall, in accordance with the Foreign Assistance Act of 1961, as amended, including Part II, Chapter 6 thereof, the Joint Resolution of October 13, 1975 (Public Law 94–110, 89 Stat. 572, 22 U.S.C. 2441 note), and the provisions of this Order, assist in the implementation of the provisions of Annex I and the Appendix to Annex I of the Treaty of Peace between the Arab Republic of Egypt and the State of Israel, signed March 26, 1979. The Mission shall assist by (i) verifying Zones A and B and the provisions of Annex I of the Treaty relating to force levels, fortifications, and installations by on the ground inspections and reconnaissance flights, (ii) verifying the technical installations within the Interim Buffer Zone as provided in Article V(3)(c) of the Appendix to Annex I of the Treaty, and (iii) conducting other assigned tasks in order to further the implementation of the Treaty of Peace. Such assistance shall be subject to broad policy guidance received through the Assistant to the President for National Security Affairs, and the continuous supervision and general direction of the Secretary of State pursuant to Section 622(c) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2382).

(c)[2] It shall be the duty and responsibility of the Mission to ensure that the United States role enhances the prospect of compliance in good faith with the terms of the Egyptian-Israeli agreement and thereby promotes the cause of peace.

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[1] Subsec. (b) was amended and restated by E.O. 12150, and further amended and restated by E.O. 12227. The basic objective of both amendments was to reflect the signing of the Treaty of Peace between the Arab Republic of Egypt and the State of Israel on Mar. 26, 1979.

[2] Reference to the Early Warning System in subsec. (c) was deleted by E.O. 12227.

(d) At the head of the Mission there shall be a Director, who shall be appointed by the President. The Director shall be a Special Representative of the President. There shall also be a Deputy Director, who shall be appointed by the President. The Deputy Director shall perform such duties as the Director may direct, and shall serve as the Director in the case of a vacancy in the office of the Director, or during the absence or disability of the Director.

(e) The Director and Deputy Director shall receive such compensation, as permitted by law, as the President may specify.

Sec. 2. (a) The Director shall exercise immediate supervision and direction over the Mission.

(b) The Director may, to the extent permitted by law, employ such staff as may be necessary.

(c) The Director may, to the extent permitted by law and the provisions of this order, enter into such contracts as may be necessary to carry out the purposes of this order.

(d) The Director may procure the temporary or intermittent services of experts or consultants, in accordance with the provisions of Section 626 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2386), and section 3109 of title 5 of the United States Code.

(e) As requested by the Director, the agencies of the Executive branch shall, to the extent permitted by law and to the extent practicable, provide the Mission with such administrative services, information, advice, and facilities as may be necessary for the fulfillment of the Mission's functions under this order.

(f) [3] The functions vested in the President by Section 6 of the Special International Security Assistance Act of 1979 (22 U.S.C. 3404) are delegated to the Director.

(g) [3] The Director shall, as soon as possible after the Multinational Force and Observers becomes operational on April 25, 1982, phase-out the activities of the Mission in the Sinai and terminate all functions of the Mission not later than September 30, 1982.

(h) [3] The Secretary of State shall be responsible after September 30, 1982 for any residual actions which may be necessary to conclude matters initiated by the Sinai Support Mission.

Sec. 3. (a) In accordance with the provisions of Section 633 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2393), it is hereby determined to be in furtherance of the purposes of the Foreign Assistance Act of 1961, as amended, that the functions authorized by that act and required by this order, may be performed, subject to the provisions of subsection (b) of this Section, by the Director without regard to the following specified provisions of law and limitations of authority:

(1) Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529).

(2) Section 3710 of the Revised Statutes (41 U.S.C. 8).

(3) Section 2 of Title III of the Act of March 3, 1933 (47 Stat. 1520, 41 U.S.C. 10a).

(4) Section 3735 of the Revised Statutes (41 U.S.C. 13).

(5) Section 3679 of the Revised Statutes, as amended (31 U.S.C. 665), Section 3732 of the Revised Statutes, as amended (41 U.S.C. 11), and Section 9 of the Act of June 30, 1906 (34

[3] Subsecs. (f), (g), and (h) were added by E.O. 12357.

Stat. 764, 31 U.S.C. 627), so as to permit the indemnification of contractors against unusually hazardous risks, as defined in Mission contracts, consistent, to the extent practicable, with regulations prescribed by the Department of Defense pursuant to the provisions of the Act of August 28, 1958, as amended (50 U.S.C. 1431 et seq.) and Executive Order No. 10789 of November 14, 1958, as amended.

(6) Section 302(a) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(a)), so as to permit the Sinai Support Mission to utilize the procurement regulations promulgated by the Department of Defense pursuant to Section 2202 of Title 10 of the United States Code.

(7) Section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 254(b)), so as to permit the payment of fees in excess of the prescribed fee limitations but nothing herein contained shall be construed to constitute authorization hereunder for the use of the cost-plus-a-percentage-of-cost system of contracting.

(8) Section 305 of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 255).

(9) Section 901(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(a)).

(b) It is directed that each specific use of the waivers of statutes and limitations of authority authorized by this Section shall be made only when determined in writing by the Director that such use is specifically necessary and in furtherance of the purposes of this order and in the interests of the United States.

Sec. 4. (a) There is hereby established the Sinai Interagency Board, hereinafter referred to as the Board, which shall be composed of the following:

(1) The Secretary of State or his representative.

(2) The Secretary of Defense or his representative.

(3) The Administrator, Agency for International Development, or his representative.

(4) The Director of the United States Arms Control and Disarmament Agency or his representative.

(5) The Director of Central Intelligence or his representative.

(6) The Director of the United States Sinai Support Mission or his representative.

(b) The Director of the United States Sinai Support Mission or his representative shall be Chairman of the Board.

(c) The President may from time to time designate others to serve on, or participate in the activities of, the Board. The Board may invite representatives of other departments and agencies to participate in its activities.

(d) The Board shall meet at the call of the Chairman to assist, coordinate, and advise concerning the activities of the United States Sinai Support Mission.

Sec. 5. The Secretary of State shall, pursuant to the provisions of Executive Order No. 10973, as amended, including Part V thereof, and this order, provide from funds made available to the President the funds necessary for the activities of the United States Sinai Support Mission.

Sec. 6. All activities now being undertaken by the Secretary of State to implement the "United States Proposal for the Early Warning System in Sinai" shall be continued until such time as the Mission has become operational and Director requests the transfer of those activities to the Mission. The Secretary of State may exercise any of the authority or responsibility vested in the Director, by this order, in order to continue the performance of activities related to the Early Warning System until transferred to the Director. All such activities undertaken by the Secretary of State shall be deemed to have been taken by a Director.

4. Berlin Resolution

House Concurrent Resolution 570, 87th Congress, 76 Stat. 1429, passed October 10, 1962

CONCURRENT RESOLUTION

Whereas the primary purpose of the United States in its relations with all other nations is and has been to develop and sustain a just and enduring peace for all; and

Whereas it is the purpose of the United States to encourage and support the establishment of a free, unified, and democratic Germany; and

Whereas in connection with the termination of hostilities in World War II the United States, the United Kingdom, France, and the Soviet Union freely entered into binding agreements under which the four powers have the right to remain in Berlin, with the right of ingress and egress, until the conclusion of a final settlement with the Government of Germany; and

Whereas no such final settlement has been concluded by the four powers and the aforementioned agreements continue in force: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress—

(a) that the continued exercise of United States, British, and French rights in Berlin constitutes a fundamental political and moral determination;

(b) that the United States would regard as intolerable any violation by the Soviet Union directly or through others of those rights in Berlin, including the right of ingress and egress;

(c) that the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of those rights by the Soviet Union directly or through others, and to fulfill our commitment to the people of Berlin with respect to their resolve for freedom.

5. Indochina Resolutions

a. Tonkin Gulf Resolution

[Public Law 88–408 [H.J. Res. 1145] 78 Stat. 384, approved August 10, 1964

A JOINT RESOLUTION To promote the maintenance of international peace and security in Southeast Asia.

[Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

[Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

[Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

[Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

[Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.]

NOTE.—Sec. 12 of Public Law 91-672, the Foreign Military Sales Act Amendments, approved January 12, 1971, provided that the joint resolution should terminate effective January 2, 1971. (See vol. I, page 330.) See also, S. Con. Res. 64, passed July 10, 1970.

b. Creation of a Select Committee to Investigate the Problem of United States Servicemen Missing in Action in Southeast Asia

House Resolution 335, 94th Congress, Agreed to September 11, 1975

Resolved, That (a) there is hereby established in the House of Representatives a select committee composed of ten Members of the House.

(b) Members shall be appointed by the Speaker of the House, and one Member shall be designated by the Speaker to serve as chairman.

(c) Any vacancy occurring in the membership of the select committee shall be filled in the same manner in which the original appointment was made.

Sec. 2. The select committee is authorized and directed to conduct a full and complete investigation and study of—

(1) the problem of United States servicemen still identified as missing in action, as well as those known dead whose bodies have not been recovered, as a result of military operations in North Vietnam, South Vietnam, Laos, and Cambodia and the problem of United States civilians identified as missing or unaccounted for, as well as those known dead whose bodies have not been recovered in North Vietnam, South Vietnam, Laos, and Cambodia;

(2) the need for additional international inspection teams to determine whether there are servicemen still held as prisoners of war or civilians held captive or unwillingly detained in the aforementioned areas.

Sec. 3. For the purpose of this resolution, this select committee is authorized to sit and act during the present Congress at times and places as it deems appropriate whether the House is sitting, has recessed, or has adjourned. The select committee is authorized to hold such hearings, and to require, by subpena or other power, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it deems necessary. The committee and its staff may conduct field investigations or inspections and shall be authorized to travel to Southeast Asia if deemed necessary to investigate aspects of the problem.

(b) Subpenas may be issued over the signature of the chairman of the select committee or any member designated by him, and may be served by any person designated by the chairman or such member.

(c) The chairman of the select committee, or any member designated by him, may administer oaths to any witness.

Sec. 4. To enable the select committee to carry out the purposes of this resolution, it is authorized to employ and fix compensation of such clerks, experts, consultants, technicians, and clerical and

stenographic assistants as it deems necessary. The committee may reimburse the members of its staff for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the select committee other than expenses in connection with meetings of the select committee held in the District of Columbia.

Sec. 5. The select committee is authorized and directed to report to the House with respect to results of its investigation as soon as is practicable but not later than one year after adoption of the resolution. Any report made when the House is not in session shall be filed with the Clerk of the House.

Sec. 6. The authority granted herein shall expire thirty days after the filing of the report with the House of Representatives.

Sec. 7. The expenses of the select committee shall be paid from the contingent fund of the House of Representatives upon vouchers signed by the chairman of the select committee and approved by the Speaker.

6. National Commitment

Senate Resolution 85, 91st Congress, Report No. 91-129, agreed to June 25, 1969

RESOLUTION

Whereas accurate definition of the term "national commitment" in recent years has become obscured: Now, therefore, be it

Resolved, That (1) a national commitment for the purpose of this resolution means the use of the Armed Forces of the United States on foreign territory, or a promise to assist a foreign country, government, or people by the use of the Armed Forces or financial resources of the United States, either immediately or upon the happening of certain events, and (2) it is the sense of the Senate that a national commitment by the United States results only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.

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7. Treaty of Friendship and Cooperation Between the United States and Spain—Implementation for Fiscal Year 1977

Text of Public Law 94-537 [S. 3557] 90 Stat. 2498, approved October 18, 1976

AN ACT To authorize the obligation and expenditure of funds to implement for fiscal year 1977 the provisions of the Treaty of Friendship and Cooperation between the United States and Spain, signed at Madrid on January 24, 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to carry out the programs and activities provided for in the Treaty of Friendship and Cooperation between the United States of America and Spain,[1] signed at Madrid on January 24, 1976, including its Supplementary Agreements and the exchange of notes related to those Supplementary Agreements (hereinafter in this Act referred to as the "treaty") of the amounts authorized to be appropriated for fiscal year 1977 under section 507 of the International Security Assistance and Arms Export Control Act of 1976,[2] not to exceed the following amounts shall be available for obligation and expenditure to carry out the treaty:

(1) For military assistance under chapter 2 of part II of the Foreign Assistance Act of 1961,[3] $15,000,000.

(2) For security supporting assistance under chapter 4 of part II of such Act,[4] $7,000,000.

(3) For international military education and training under chapter 5 of part II of such Act,[5] $2,000,000.

(4) For guaranties under section 24 of the Arms Export Control Act,[6] $12,000,000.

(b) Subsection (b) of section 507 of the International Security Assistance and Arms Export Control Act of 1976 shall not apply with respect to the obligation or expenditure of funds appropriated under such section to carry out the treaty.

Sec. 2. (a) Except as provided in subsection (b), foreign assistance and military sales activities carried out pursuant to the treaty shall be conducted in accordance with provisions of law applicable to foreign assistance and military sales programs of the United States.

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[1] For text, see vol. III, page 821.

[2] For text, see vol. I, page —.

[3] For text, see vol. I, page 99, FA Appropriations Act, 1977: *"Provided further,* That $15,000,000 of this appropriation shall be available only upon ratification of the Treaty of Friendship and Cooperation Between Spain and the United States of America."

[4] For text, see vol. I, page 111, FA Appropriations Act, 1977: *"Provided further,* That $7,000,000 of this appropriation shall be available only upon ratification of the Treaty of Friendship and Cooperation Between Spain and the United States of America."

[5] For text, see vol. I, page 116, FA Appropriations Act, 1977: *"Provided,* That $2,000,000 of this appropriation shall be available only upon ratification of the Treaty of Friendship and Cooperation Between Spain and the United States of America."

[6] For text, see vol. I, page 203.

(b) Section 620(m) of the Foreign Assistance Act of 1961 [7] shall not apply with respect to the programs and activities described in subsection (a).

(c) In carrying out the provisions of article VI of Supplementary Agreement Number 7 (relating to modernizing, semiautomating, and maintaining the aircraft control and warning network in Spain), the United States contribution of not to exceed $50,000,000 shall be financed from Department of Defense appropriations available for that purpose.

(d) This Act satisfies the requirements of section 7307 of title 10 of the United States Code with respect to the transfer of naval vessels pursuant to Supplementary Agreement Number 7.

(e) In order to carry out the provisions of article X of Supplementary Agreement Number 7 (relating to lease and purchase of aircraft), the proceeds from the lease of aircraft to Spain under that article shall be available only for appropriation for the purchase of aircraft by the United States for the purposes of that article.

Sec. 3. The authorities contained in this Act shall become effective only upon such date as the treaty enters into force [8] and shall continue in effect only so long as the treaty remains in force.

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[7] Sec. 620(m) repealed by sec. 734(a)(1) of Public Law 97-113 (95 Stat. 1560).
[8] Entered into force Sept. 21, 1976.

8. North Atlantic Alliance

a. North Atlantic Treaty Organization Mutual Support Act of 1979

Public Law 96-323 [H.R. 5580], 94 Stat. 1016, approved August 4, 1980, as amended by Public Law 97-22 [H.R. 3807], 95 Stat. 124 at 138, approved July 10, 1981

AN ACT To amend title 10, United States Code, to authorize the Secretary of Defense to enter into certain agreements to further the readiness of the military forces of the North Atlantic Treaty Organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "North Atlantic Treaty Organization Mutual Support Act of 1979".

Sec. 2. (a) Title 10, United States Code, is amended by inserting after chapter 137 the following new chapter:

"CHAPTER 138—NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS

"Sec.
"2321. Authority to acquire logistic support supplies, and services for United States armed forces in Europe.
"2322. Cross-servicing agreements.
"2323. Law applicable to acquisition and cross-servicing agreements.
"2324. Methods of payments for acquisitions and transfers by the United States.
"2325. Liquidation of accrued credits and liabilities.
"2326. Crediting of receipts.
"2327. Limitation on amounts that may be obligated or accrued by the United States.
"2328. Inventories of supplies not to be increased.
"2329. Regulations.
"2330. Annual reports.
"2331. Definitions.

"§ 2321. Authority to acquire logistic support, supplies, and services for United States armed forces in Europe

"Subject to section 2323 of this title and subject to the availability of appropriations, the Secretary of Defense may acquire from the Governments of North Atlantic Treaty Organization countries and from North Atlantic Treaty Organization subsidiary bodies logistic support, supplies, and services for elements of the armed forces deployed in Europe and adjacent waters.

"§ 2322. Cross-servicing agreements

"Subject to section 2323 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into agreements with the Government of any North Atlantic Treaty Organization country and with any North Atlantic Treaty Organization subsidiary body under which the United States agrees to provide logistic support, supplies, and services to military forces of such country or subsidiary body

deployed in Europe and adjacent waters in return for the reciprocal provision of logistic support, supplies, and services by such country or subsidiary body to elements of the armed forces deployed in Europe and adjacent waters.

"§ 2323. Law applicable to acquisition and cross-servicing agreements

"(a) Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2321 of this title and agreements entered into under section 2322 of this title shall be made in accordance with chapter 137 of this title and the provisions of this chapter.

"(b) Section 2207, 2304(g), 2306(a), 2306(b), 2306(e), 2306(f), and 2313 of this title, section 3741 of the Revised Statutes (41 U.S.C. 22), and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall not apply to acquisitions made under the authority of section 2321 of this title or to agreements entered into under section 2322 of this title.

"§ 2324. Methods of payment for acquisitions and transfers by the United States

"(a) Logistics support, supplies, and services may be acquired or transferred by the United States under the authority of this chapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an identical or substantially identical nature.

"(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

"(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

"(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

"(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)—

"(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces

commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

"(B) transfers by the United States to such country under this chapter [1] of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

"(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

"(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies under this chapter.

"§ 2325. Liquidation of accrued credits and liabilities

"Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this chapter shall be liquidated not less often than once every three months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

"§ 2326. Crediting of receipts

"Any receipt of the United States as a result of an agreement entered into under this chapter shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

"§ 2327. Limitation on amounts that may be obligated or accrued by the United States

"(a) Except during a period of active hostilities involving the North Atlantic Treaty Organization, the total amount of reimbursable liabilities that the United States may accrue under this chapter (before the computation of offsetting balances) may not exceed $100,000,000 in any fiscal year, and of such amount not more than $25,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants).

"(b) Except during a period of active hostilities involving the North Atlantic Treaty Organization, the total amount of reimbursable credits that the United States may accrue under this chapter (before the computation of setting balances) may not exceed $100,000,000 in any fiscal year.

"§ 2328. Inventories of supplies not to be increased

"Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this chapter [1] to military forces of any North Atlantic

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[1] The word "chapter" was substituted in lieu of the word "Act" by sec. 11(a)(8) of Public Law 97-22 (95 Stat. 138).

Treaty Organization country or any North Atlantic Treaty Organization subsidiary body.

"§ 2329. Regulations

"The Secretary of Defense shall prescribe regulations to implement this chapter and shall, not later than sixty days before the effective date of such regulations, transmit copies of such regulations to the Congress. No agreement to make an acquisition or transfer under the authority provided by this chapter may be entered into until such regulations take effect.

"§ 2330. Annual reports

"The Secretary of Defense shall submit to the Congress not later than February 1 of each year a report containing—

"(1) a description of each agreement entered into under the authority of this chapter that was in effect during the fiscal year preceding the fiscal year in which such report is submitted;

"(2) a report of the dollar value of each reimbursable acquisition or transfer of logistic support, supplies, or services by the United States (by appropriation, account, or fund) during such fiscal year under each such agreement;

"(3) a report of nonreimbursable acquisitions and transfers of logistic support and services by the United States (by appropriation, account, and fund) during such fiscal year under each such agreement; and

"(4) a description of each agreement entered into (or expected to be entered into) under the authority of this chapter that is expected to be in effect during the fiscal year in which such report is submitted, together with a report of the estimated total dollar value of aquisitions and transfers by the United States (by appropriation, account, or fund) expected to be made during such fiscal year under each such agreement.

"§ 2331. Definitions

"In this chapter:

"(1) 'Logistic support, supplies, and services' means food, billeting, transportation, petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, and port services.

"(2) 'North Atlantic Treaty Organization subsidiary bodies' means—

"(A) any organization within the meaning of the term 'subsidiary bodies' in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

"(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North At-

lantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.".

(b) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of title 10, United States Code, are amended by inserting after the item relating to chapter 137 the following new item:

"138. North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements ..... 2321".

b. Reaffirming the Unity of the North Atlantic Alliance Commitment

Public Law 95–287 [S.J. Res. 137], 92 Stat. 280, approved May 30, 1978

JOINT RESOLUTION Reaffirming the unity of the North Atlantic Alliance commitment.

Whereas thirty years ago the Congress passed the Vandenberg Resolution, which has come to represent the highest qualities of bipartisan statesmanship; and

Whereas the North Atlantic Alliance has preserved the peace in Europe for an entire generation, allowing its members to attain unprecedented levels of prosperity and well-being for their people; and

Whereas the leaders of the Alliance will gather in Washington, D.C., on May 30 and 31, 1978, to renew their adherence to its principles and rededicate themselves to its objectives; and

Whereas this meeting will be the capstone of efforts to ensure that the needs of collective security will be met over the next decade: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the North Atlantic Alliance be reaffirmed as a vital commitment and cornerstone of United States foreign policy, and that the bipartisan spirit that inspired its birth be rededicated to the purpose of strengthening it further in the cause of peace and security.

Sec. 2. The Congress recognizes the extraordinary success of the North Atlantic Alliance in fulfilling its goals of safeguarding the freedom, common heritage and civilization of its peoples, founded on the principles of democracy, individual liberty and the rule of law.

Sec. 3. On the occasion of the NATO summit meeting in Washington, the Congress declares its support for efforts to reaffirm the unity of the North Atlantic Alliance, to strengthen its defensive capabilities to meet threats to the peace, and on this basis to persevere in attempts to lessen tensions with the Warsaw Pact States.

c. Reaffirming the United States Commitment to the North Atlantic Alliance

Public Law 96–9 [H.J. Res. 283], 93 Stat. 22, approved April 19, 1979

JOINT RESOLUTION Reaffirming the United States commitment to the North Atlantic Alliance.

Whereas April 4, 1979, marks the thirtieth anniversary of the signing in Washington of the North Atlantic Treaty;

Whereas the alliance created by the treaty constitutes the manifestation of the ties which bind the democracies of Europe and North America and of their determination to preserve their common heritage of individual liberties, the rule of law, and the dignity of humankind;

Whereas the peace and stability insured by the alliance for thirty years has fostered the well-being and freedom of nearly six hundred million human beings;

Whereas the conditions for political stability and economic prosperity derive from the military security provided by the alliance; and

Whereas the search for world peace, mutual respect among the nations of the world, and reduction in armaments are attainable only in a secure environment: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the North Atlantic Alliance be reaffirmed as a vital commitment and cornerstone of United States foreign policy, and that the bipartisan spirit that inspired its birth be rededicated to the purpose of strengthening it further in the cause of peace and security.

Sec. 2. The Congress recognizes the contribution of the Canadian and European Allies to the common defense and to the preservation of the civilization and common heritage of the West.

Sec. 3. On the occasion of this thirtieth anniversary, the Congress pledges its support for the Alliance as the indispensable basis for the achievement of our mutual security, the reduction of tensions, and the pursuit of improved relations among all nations.

Sec. 4. The Congress requests that the President of the United States forward copies of this resolution to the Chiefs of State of all member countries of the North Atlantic Treaty Organization, and to the Secretary General in recognition of his contribution to the strength and confidence of the North Atlantic Treaty Organization.

9. Taiwan Relations

a. Taiwan Relations Act [1]

Public Law 96-8 [H.R. 2479], 93 Stat. 14, approved April 10, 1979

AN ACT To help maintain peace, security, and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Taiwan Relations Act".

FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) The President having terminated governmental relations between the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, the Congress finds that the enactment of this Act is necessary—

(1) to help maintain peace, security, and stability in the Western Pacific; and

(2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.

(b) It is the policy of the United States—

(1) to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area;

(2) to declare that peace and stability in the area are in the political, security, and economic interests of the United States, and are matters of international concern;

(3) to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

[1] 22 U.S.C. 3301-3316.

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

(c) Nothing contained in this Act shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.

IMPLEMENTATION OF UNITED STATES POLICY WITH REGARD TO TAIWAN

Sec. 3. (a) In furtherance of the policy set forth in section 2 of this Act, the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.[2]

(b) The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. Such determination of Taiwan's defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.

(c) The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.

APPLICATION OF LAWS; INTERNATIONAL AGREEMENTS

Sec. 4. (a) The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the law of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

(b) The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

(2) Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations,

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[2] Sec. 23 of the International Security Assistance Act of 1979 (Public Law 96-92; 93 Stat. 710) provides authorization for the President to transfer to Taiwan war reserve material and other property during calendar years 1980 and 1981. See vol. I, page 279, for complete text of sec. 23.

states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with section 6 of this Act, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.

(3)(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny, or otherwise affect in any way any rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

(B) For all purposes under the laws of the United States, including actions in any court in the United States, recognition of the People's Republic of China shall not affect in any way the ownership of or other rights or interests in properties, tangible and intangible, and other things of value, owned or held on or prior to December 31, 1978, or thereafter acquired or earned by the governing authorities on Taiwan.

(4) Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.

(5) Nothing in this Act, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States, or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission, or department to make a finding of fact or determination of law, under the Atomic Energy Act of 1954 and the Nuclear Non-Proliferation Act of 1978, to deny an export license application or to revoke an existing export license for nuclear exports to Taiwan.

(6) For purposes of the Immigration and Nationality Act, Taiwan may be treated in the manner specified in the first sentence of section 202(b) of that Act.[3]

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[3] Sec. 714 of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1548) provides the following:

"Sec. 714. The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act shall be considered to have been granted with respect to Taiwan (China)."

The first sentence of such sec. 202(b) states: "Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions shall be treated as a separate foreign state for the purposes of the numerical limitation set forth in the proviso to subsection (a) of this section when approved by the Secretary of State."

On Apr. 30, 1979, the Department of State made a final ruling whereby 22 CFR Part 42 was amended, effective Apr. 23, 1979, to provide that aliens in Taiwan applying for immigrant visas shall be required to appear personally before a designated officer of the American Institute in Taiwan in connection with the execution of his immigrant visa application. This ruling, which was made pursuant to the authority contained in section 104 of the Immigration and Nationality Act, can be found at 44 F.R. 28659, May 16, 1979.

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution of any other international organization.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sec. 5. (a) During the three-year period beginning on the date of enactment of this Act, the $1,000 per capita income restriction in clause (2) of the second undesignated paragraph of section 231 of the Foreign Assistance Act of 1961 shall not restrict the activities of the Overseas Private Investment Corporation in determining whether to provide any insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan.

(b) Except as provided in subsection (a) of this section, in issuing insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan, the Overseas Private Insurance Corporation shall apply the same criteria as those applicable in other parts of the world.

THE AMERICAN INSTITUTE OF TAIWAN

Sec. 6. (a) Programs, transactions, and other relations conducted or carried out by the President or any agency of the United States Government with respect to Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by or through—

(1) The American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia, or

(2) such comparable successor nongovernmental entity as the President may designate,

(hereafter in this Act referred to as the "Institute").

(b) Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to enter into, perform, enforce, or have in force an agreement or transaction relative to Taiwan, such agreement or transaction shall be entered into, performed, and enforced, in the

manner and to the extent directed by the President, by or through the Institute.

(c) To the extent that any law, rule, regulation, or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Institute is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Institute pursuant to this Act, such law, rule, regulation, or ordinance shall be deemed to be preempted by this Act.

SERVICES BY THE INSTITUTE TO UNITED STATES CITIZENS ON TAIWAN

Sec. 7. (a) The Institute may authorize any of its employees on Taiwan—

(1) to administer to or take from any person on oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States;

(2) to act as provisional conservator of the personal estates of deceased United States citizens; and

(3) to assist and protect the interests of United States persons by performing other acts such as are authorized to be performed outside the United States for consular purposes by such laws of the United States as the President may specify.

(b) Acts performed by authorized employees of the Institute under this section shall be valid, and of like force and effect within the United States, as if performed by any other person authorized under the laws of the United States to perform such acts.

TAX EXEMPT STATUS OF THE INSTITUTE

Sec. 8. (a) The Institute, its property, and its income are exempt from all taxation now or hereafter imposed by the United States (except to the extent that section 11(a)(3) of this Act requires the imposition of taxes imposed under chapter 21 of the Internal Revenue Code of 1954, relating to the Federal Insurance Contributions Act) or by any State or local taxing authority of the United States.

(b) For purposes of the Internal Revenue Code of 1954, the Institute shall be treated as an organization described in sections 170(b)(1)(A), 170(c), 2055(a), 2106(a)(2)(A), 2522(a), and 2522(b).

FURNISHING PROPERTY AND SERVICES TO AND OBTAINING SERVICES FROM THE INSTITUTE

Sec. 9. (a) Any agency of the United States Government is authorized to sell, loan, or lease property (including interests therein) to, and to perform administrative and technical support functions and services for the operations of, the Institute upon such terms and conditions as the President may direct. Reimbursements to agencies under this subsection shall be credited to the current applicable appropriation of the agency concerned.

(b) Any agency of the United States Government is authorized to acquire and accept services from the Institute upon such terms and conditions as the President may direct. Whenever the President determines it to be in furtherance of the purposes of this Act, the procurement of services by such agencies from the Institute may be

effected without regard to such laws of the United States normally applicable to the acquisition of services by such agencies as the President may specify by Executive order.

(c) Any agency of the United States Government making funds available to the Institute in accordance with this Act shall make arrangements with the Institute for the Comptroller General of the United States to have access to the books and records of the Institute and the opportunity to audit the operations of the Institute.

TAIWAN INSTRUMENTALITY

Sec. 10. (a) Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to render or provide to or to receive or accept from Taiwan, any performance, communication, assurance, undertaking, or other action, such action shall, in the manner and to the extent directed by the President, be rendered or provided to, or received or accepted from, an instrumentality established by Taiwan which the President determines has the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with this Act.

(b) The President is requested to extend to the instrumentality established by Taiwan the same number of offices and complement of personnel as were previously operated in the United States by the governing authorities on Taiwan recognized as the Republic of China prior to January 1, 1979.

(c) Upon the granting by Taiwan of comparable privileges and immunities with respect to the Institute and its appropriate personnel, the President is authorized to extend with respect to the Taiwan instrumentality and its appropriate personnel, such privileges and immunities (subject to appropriate conditions and obligations) as may be necessary for the effective performance of their functions.

SEPARATION OF GOVERNMENT PERSONNEL FOR EMPLOYMENT WITH THE INSTITUTE

Sec. 11. (a)(1) Under such terms and conditions as the President may direct, any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts employment with the Institute.

(2) An officer or employee separated by an agency under paragraph (1) of this subsection for employment with the Institute shall be entitled upon termination of such employment to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits which the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(3) An officer or employee entitled to reemployment or reinstatement rights under paragraph (2) of this subsection shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which

such officer or employee was participating prior to employment by the Institute, including programs for compensation for job-related deaths, injury, or illness; programs for health and life insurance; programs for annual, sick, and other statutory leave; and programs for retirement under any system established by the laws of the United States; except that employment with the Institute shall be the basis for participation in such programs only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with any agency of the United States Government.

(4) Any officer or employee of an agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to the enactment of this Act shall receive the benefits of this section for the period of such service.

(b) Any agency of the United States Government employing alien personnel on Taiwan may transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by the laws of the United States for the retirement of employees in which the alien was participating prior to the transfer to the Institute, except that employment with the Institute shall be creditable for retirement purposes only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

(c) Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18, United States Code.

(d)(1) For purposes of sections 911 and 913 of the Internal Revenue Code of 1954, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United States as allowances and benefits which are exempt from taxation under section 912 of such Code.

(2) Except to the extent required by subsection (a)(3) of this section, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of such Code and title II of the Social Security Act.

REPORTING REQUIREMENT

Sec. 12. (a) The Secretary of State shall transmit to the Congress the text of any agreement to which the Institute is a party. However, any such agreement the immediate public disclosure of

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which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President.

(b) For purposes of subsection (a), the term "agreement" includes—

(1) any agreement entered into between the Institute and the governing authorities on Taiwan or the instrumentality established by Taiwan; and

(2) any agreement entered into between the Institute and an agency of the United States Government.

(c) Agreements and transactions made or to be made by or through the Institute shall be subject to the same congressional notification, review, and approval requirements and procedures as if such agreements and transactions were made by or through the agency of the United States Government on behalf of which the Institute is acting.

(d) During the two-year period beginning on the effective date of this Act, the Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, every six months, a report describing and reviewing economic relations between the United States and Taiwan, noting any interference with normal commercial relations.

RULES AND REGULATIONS

Sec. 13. The President is authorized to prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this Act. During the three-year period beginning on the effective date of this Act, such rules and regulations shall be transmitted promptly to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate. Such action shall not, however, relieve the Institute of the responsibilities placed upon it by this Act.

CONGRESSIONAL OVERSIGHT

Sec. 14. (a) The Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and other appropriate committees of the Congress shall monitor—

(1) the implementation of the provisions of this Act;

(2) the operation and procedures of the Institute;

(3) the legal and technical aspects of the continuing relationship between the United States and Taiwan; and

(4) the implementation of the policies of the United States concerning security and cooperation in East Asia.

(b) Such committees shall report, as appropriate, to their respective Houses on the results of their monitoring.

DEFINITIONS

Sec. 15. For purposes of this Act—

(1) the term "laws of the United States" includes any statute, rule, regulation, ordinance, order, or judicial rule of decision of the United States or any political subdivision thereof; and

(2) the term "Taiwan" includes, as the context may require, the islands of Taiwan and the Pescadores, the people on those islands, corporation and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any successor governing authorities (including political subdivisions, agencies, and instrumentalities thereof).

AUTHORIZATION OF APPROPRIATIONS

Sec. 16. In addition to funds otherwise available to carry out the provisions of this Act, there are authorized to be appropriated to the Secretary of State for the fiscal year 1980 such funds as may be necessary to carry out such provisions.[4] Such funds are authorized to remain available until expended.

SEVERABILITY OF PROVISIONS

Sec. 17. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 18. This Act shall be effective as of January 1, 1979.

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[4] Public Law 97-377 (Further Continuing Appropriations Act, 1983) and S. 2956, as reported in the Senate on Sept. 24, 1982 and made part of Public Law 97-377, provides $8,744,000 for necessary expenses to carry out the Taiwan Relations Act.

b. Executive Order 12143, 44 F.R. 37191, June 22, 1979

MAINTAINING UNOFFICIAL RELATIONS WITH THE PEOPLE OF TAIWAN

In light of the recognition of the People's Republic of China by the United States of America as the sole legal government of China, and by the authority vested in me as President of the United States of America, by the Taiwan Relations Act (Public Law 96-8, 93 Stat. 14, 22 U.S.C. 3301 *et seq.*, hereinafter referred to as "the Act"), and Section 301 of Title 3 of the United States Code, in order to facilitate the maintenance of commercial, cultural and other relations between the people of the United States and the people on Taiwan without official representation or diplomatic relations, it is hereby ordered as follows:

1-1. Delegation and Reservation of Functions.

1-101. Exclusive of the functions otherwise delegated, or reserved to the President, by this Order, there are delegated to the Secretary of State all functions conferred upon the President by the Act. In carrying out these functions, the Secretary of State shall consult with other departments and agencies as appropriate.

1-102. There are delegated to the Director of the Office of Personnel Management the functions conferred upon the President by paragraphs (1) and (2) of Section 11(a) of the Act. These functions shall be exercised in consultation with the Secretary of State.

1-103. There are reserved to the President the functions conferred upon the President by Section 3, Section 7(a)(3), and the second sentence of Section 9(b), and the determination specified in Section 10(a) of the Act.

1-2. Specification of Laws and Determinations.

1-201. Pursuant to Section 7(a) of the Act, I specify the following provisions of law:

(a) Section 4082 of the Revised Statutes (22 U.S.C. 1172);

(b) Section 1707 of the Revised Statutes (22 U.S.C. 1173);

(c) Section 1708 of the Revised Statutes (22 U.S.C. 1174);

(d) Section 1709 of the Revised Statutes, as amended (22 U.S.C. 1175);

(e) Section 1710 of the Revised Statutes, as amended (22 U.S.C. 1176);

(f) Section 1711 of the Revised Statutes, as amended (22 U.S.C. 1177);

(g) Section 1718 of the Revised Statutes (22 U.S.C. 1185); and

(h) Section 7 of the Act of April 5, 1906 (22 U.S.C. 1195).

1-202. Pursuant to Section 9(b) of the Act, and in furtherance of the purposes of the Act, the procurement of services may be effected without regard to the following provisions of law and limitations of authority:

(a) Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(b) Section 9 of the Act of June 30, 1906 (31 U.S.C. 627), and Section 3679 and 3732 of the Revised Statutes (31 U.S.C. 665; 41 U.S.C. 11), to the extent necessary to permit the indemnification of contractors against unusually hazardous risks, as defined in Institute contracts, consistent, to the extent practicable with regulations prescribed by the Department of Defense pursuant to the provisions of the Act of August 28, 1958 (50 U.S.C. 1431 *et seq.*), and Executive Order No. 10789 of November 14, 1958, as amended;

(c) Section 3709 of the Revised Statutes and Section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 5, 252);

(d) Section 3710 of the Revised Statutes (41 U.S.C. 8);

(e) Section 2 of Title III of the Act of March 3, 1933 (41 U.S.C. 10a);

(f) Section 3735 of the Revised Statutes (41 U.S.C. 13);

(g) Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)), so as to permit the payment of fees in excess of the prescribed fee limitations, but nothing herein shall be construed as authorizing the use of the cost-plus-a-percentage-of-cost system of contracting;

(h) Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);

(i) Sections 2 through 16 of the Contract Disputes Act of 1978 (41 U.S.C. 601–613);

(j) Sections 2304, 2305 and 2306 (a) through (f) of Title 10 of the United States Code, but nothing herein shall be construed as authorizing the use of the cost-plus-a-percentage-of-cost system of contracting; and

(k) Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168).

1–203. (a) With respect to cost-type contracts with the American Institute in Taiwan under which no fee is charged or paid, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

(b) With respect to contracts heretofore or hereafter made under the Act, other than those described in subsection (a) of this Section, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State determines in each case that such action is necessary to protect the foreign policy interests of the United States.

1-204. Pursuant to Section 10(a) of the Act, the Coordination Council for North American Affairs is determined to be the unofficial instrumentality established by the people on Taiwan having the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with the Act.

1-3. President's Memorandum of December 30, 1978.

1-301. This Order supersedes my memorandum of December 30, 1978 for all departments and agencies entitled "Relations With the People on Taiwan" (44 F.R. 1075). Agreements and arrangements referred to in paragraph (B) of that memorandum shall continue in force and shall be performed in accordance with the Act and this Order.

10. Panama Canal

a. Panama Canal Act of 1979[1]

Public Law 96-70 [H.R. 111], 93 Stat. 452, approved September 27, 1979

AN ACT To provide for the operation and maintenance of the Panama Canal under the Panama Canal Treaty of 1977, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Panama Canal Act of 1979".

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[1] 22 U.S.C. 3601-3871. For text of the Panama Canal Treaty, the document which this legislation implements, see vol. III, page 852.

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STATEMENT OF PURPOSE

Sec. 2. It is the purpose of this Act to provide legislation necessary or desirable for the implementation of the Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama and of the related agreements accompanying that Treaty.

DEFINITIONS AND RECOMMENDATION FOR LEGISLATION

Sec. 3. (a) For purposes of this Act—

(1) references to the Panama Canal Treaty of 1977 refer to the Panama Canal Treaty between the United States of America and the Republic of Panama, signed September 7, 1977; and

(2) references to the Panama Canal Treaty of 1977 and related agreements refer to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979.

(b) Subject to the provisions of subsection (c) of this section, for purposes of applying the Canal Zone Code or other laws of the United States and regulations issued pursuant to such Code or other laws with respect to transactions, occurrences, or status on or after the effective date of this Act—

(1) "Canal Zone" shall be deemed to refer to the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements;

(2) "Canal Zone waters" and "waters of the Canal Zone" shall be deemed to refer to "Panama Canal waters" and "waters of the Panama Canal", respectively;

(3) "Government of the Canal Zone" or "Canal Zone Government" shall be deemed to refer to the United States of America;

(4) "Governor of the Canal Zone" or "Governor", wherever the reference is to the Governor of the Canal Zone, shall be deemed to refer to the Panama Canal Commission;

(5) "Panama Canal Company" or "Company", wherever the reference is to the Panama Canal Company, shall be deemed to refer to the Panama Canal Commission;

(6) in chapter 57 of title 5 of the Canal Zone, "hospitals" and "Health Bureau" shall be deemed to refer, respectively, to the hospitals operated by the United States in the Republic of Panama, and to the organizational unit operating such hospitals; and

(7) in chapter 57 of title 5 of the Canal Zone Code, in section 4784 of title 6 of such Code, and in section 2 of title 7 of such Code, "health director" shall be deemed to refer to the senior official in charge of the hospitals operated by the United States in the Republic of Panama.

(c) Any reference set forth in subsection (b) of this section shall apply except as otherwise provided in this Act or unless (1) such reference is inconsistent with the provisions of this Act, (2) in the context in which a term is used such reference is clearly not intended, or (3) a term refers to a time before the effective date of this Act.

The President shall, within two years after the Panama Canal Treaty of 1977 enters into force, submit to the Congress a request for legislation which would—

(1) amend or repeal provisions of law which in their present form are applicable only during the transition period prescribed in Article XI of that Treaty,

(2) repeal the Canal Zone Code, and

(3) contain provisions considered necessary and appropriate in light of the experience as of that time under that Treaty.

TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

ESTABLISHMENT OF COMMISSION

Sec. 1101. There is established in the executive branch of the United States Government an agency to be known as the Panama Canal Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall, under the general supervision of the Board established by section 1102 of this Act, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

SUPERVISORY BOARD

Sec. 1102. (a) The Commission shall be supervised by a Board composed of nine members, one of whom shall be the Secretary of Defense or an officer of the Department of Defense designated by the Secretary. Not less than five members of the Board shall be nationals of the United States and the remaining members shall be nationals of the Republic of Panama. At least one of the members of the Board who are nationals of the United States shall be experienced and knowledgeable in the management or operation of an American-flag steamship line which has or had ships regularly transiting the Panama Canal, at least one other such member shall be experienced and knowledgeable in United States port operations

or in the business of exporting or importing one of the regular commodities dependent on the Panama Canal as a transportation route, and at least one other such member shall be experienced and knowledgeable in labor matters in the United States. Three members of the Board shall hold no other office in or be employed by the Government of the United States. Members of the Board who are nationals of the United States shall cast their votes as directed by the Secretary of Defense or his designee.

(b) The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States.

ADMINISTRATOR

Sec. 1103. There shall be an Administrator of the Commission, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the President.

DEPUTY ADMINISTRATOR AND CHIEF ENGINEER

Sec. 1104. (a) There shall be a Deputy Administrator and a Chief Engineer of the Commission, both of whom shall be appointed by the President. The Deputy Administrator and the Chief Engineer shall perform such duties as may be prescribed by the President.

(b) The Deputy Administrator and the Chief Engineer shall each be paid compensation at a rate of pay established by the President which does not exceed the rate of basic pay in effect for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code.

CONSULTATIVE COMMITTEE

Sec. 1105. (a) The President shall designate, and the Secretary of State shall coordinate the participation of, representatives of the United States to the Consultative Committee to be established under paragraph 7 of Article III of the Panama Canal Treaty of 1977.

(b) The Consultative Committee shall function as a diplomatic forum for the exchange of views between the United States and the Republic of Panama. The Committee shall advise the United States Government and the Government of the Republic of Panama on matters of policy affecting the operation of the Panama Canal. The Committee shall have no authority to direct the Commission or any

other department or agency of the United States to initiate or withhold action.

JOINT COMMISSION ON THE ENVIRONMENT

Sec. 1106. (a) The United States and the Republic of Panama, in accordance with the Panama Canal Treaty of 1977, shall establish a Joint Commission on the Environment (hereinafter in this section referred to as the "Joint Commission"), to be composed of not more than three representatives of the United States and three representatives of the Republic of Panama, or such other equivalent numbers of representatives as may be agreed upon by the Governments of the two countries. The United States members of the Joint Commission shall periodically review the implementation of the Panama Canal Treaty of 1977 with respect to its impact on the environment and shall, jointly with the representatives of the Government of Panama, make recommendations to the United States Government and the Government of the Republic of Panama with respect to ways to avoid or mitigate adverse environmental impacts resulting from actions taken pursuant to such Treaty.

(b) Representatives of the United States on the Joint Commission shall be appointed by the President and shall serve at the pleasure of the President. Such representatives shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

(c) Any Federal employee subject to the civil service laws and regulations who is detailed to serve with, or appointed by, the United States representatives on the Joint Commission shall not lose any pay, seniority, or other rights or benefits by reason of such detail or appointment.

(d) The United States representatives on the Joint Commission may, to such extent or in such amounts as are provided in advance in appropriation Acts, appoint and fix the compensation of such personnel as the representatives of the United States on the Joint Commission may consider necessary for the participation of the United States on the Joint Commission.

(e) The United States representatives on the Joint Commission may, in cooperation with the representatives of the Republic of Panama on the Joint Commission in conducting its affairs, subject to the approval of such rules by the Governments of the United States and the Republic of Panama.

TRAVEL EXPENSES

Sec. 1107. While away from their homes, regular places of business, or official stations in performance of services under this chapter, members of the Board of the Commission and the representatives of the United States on the Consultative Committee referred to in section 1105 of this Act and on the Joint Commission on the Environment referred to in section 1106 of this Act shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5, United States Code.

DEFENSE OF THE PANAMA CANAL

Sec. 1108. In the event of an armed attack against the Panama Canal, or when, in the opinion of the President, conditions exist which threaten the security of the Canal, the Administrator of the Commission shall, upon the order of the President, comply with such directives as the United States military officer charged with the protection and defense of the Panama Canal may consider necessary in the exercise of his duties.

JOINT SEA LEVEL CANAL STUDY COMMITTEE

Sec. 1109. (a) The President shall appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of the Panama Canal Treaty of 1977.

(b) Upon the completion of any joint study between the United States and the Republic of Panama concerning the feasibility of a sea level canal in the Republic of Panama pursuant to paragraph 1 of Article XII of the Panama Canal Treaty of 1977, the text of the study shall be transmitted by the President of the Senate and to the Speaker of the House of Representatives.

(c) No construction of a sea level canal by the United States in the Republic of Panama shall be undertaken except with express congressional authorization after submission of the study by the President as provided in subsection (b) of this section.

AUTHORITY OF THE AMBASSADOR

Sec. 1110. (a) The United States Ambassador to the Republic of Panama with respect to the responsibilities of the Commission for the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b)(1) The Commission shall not be subject to the direction or supervision of the United States Chief of Mission in the Republic of Panama with respect to the responsibilities of the Commission for the operation, management, or maintenance of the Panama Canal, as established in this or any other Act or in the Panama Canal Treaty of 1977 and related agreements, except that the Commission shall keep the Ambassador fully and currently informed with respect to all activities and operations of the Commission.

(2) Except as provided in paragraph (1) of this subsection, section 16 of the Act of August 1, 1956 (22 U.S.C. 2680a), shall apply with respect to the activities of the Commission.

SECURITY LEGISLATION

Sec. 1111. It is the sense of the Congress that the best interests of the United States require that the President enter into negotiations with the Republic of Panama for the purpose of arranging for the stationing of United States military forces, after the termination of the Panama Canal Treaty of 1977, in the area comprising the Canal Zone before the effective date of this Act, and for the maintenance of installations and facilities, after the termination of

such Treaty, for the use of United States military forces stationed in such area. The President shall report to the Congress in a timely manner the status of negotiations conducted pursuant to this section.

CODE OF CONDUCT FOR COMMISSION PERSONNEL

Sec. 1112. (a) Before assuming the duties of his office or employment, each member of the Board of the Commission and each officer and employee of the Commission shall take an oath to discharge faithfully the duties of his office or employment. All employees of the Commission shall be subject to the laws of the United States regarding duties and responsibilities of Federal employees.

(b) Not later than 60 days after all the members of the Board of the Commission have been appointed, the Board shall adopt a code of conduct applicable to the persons referred to in subsection (a) of this section. The code of conduct shall contain provisions substantially equivalent to those contained in part 735 of title 5 of the Code of Federal Regulations on the effective date of this Act. The code of conduct shall, at a minimum, contain provisions substantially equivalent to the following provisions of law:

(1) the provisions of chapter 11 of title 18, United States Code, as amended, relating to bribery, graft, or conflicts of interest, as appropriate to the employees concerned;

(2) section 7352 of title 5, United States Code, as amended;

(3) sections 207, 208, 285, 508, 641, 645, 1001, 1917, and 2071 of title 18, United States Code, as amended;

(4) section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), as amended;

(5) the Ethics in Government Act of 1978 (92 Stat. 1824), as amended; and

(6) those provisions of the laws and regulations of the Republic of Panama which are substantially equivalent to those of the United States set forth in this subsection.

(c) The Commission shall investigate any allegations regarding the violation of the code of conduct adopted pursuant to subsection (b) of this section. The Commission may recommend that the President suspend from the performance of his duties any member of the Board of the Commission or any officer or employee of the Commission, pending judicial proceedings by appropriate authorities concerning such allegations.

(d) The President shall negotiate suitable arrangements with the Republic of Panama whereby each nation shall agree to take all measures within its legal authority to assure that members of the Board of the Commission comply with the code of conduct established pursuant to subsection (b) of this section. Without prejudice to such jurisdiction as the United States may have with respect to members of the Board, the provisions of law enumerated in subsection (b) of this section shall be enforced with respect to members of the Board only in accordance with such arrangements.

OFFICE OF OMBUDSMAN

Sec. 1113. (a) There established within the Commission an Office of Ombudsman, to be directed by an Ombudsman, who shall be appointed by the Commission. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests, and suggestions of employees (and their dependents), of the Commission and other departments and agencies of the United States, including the Smithsonian Institution, conducting operations before the effective date of this Act in the area then comprising the Canal Zone concerning administrative problems, inefficiencies, and conflicts caused within departments and agencies of the United States, including the Smithsonian Institution, as a result of the implementation of the Panama Canal Treaty of 1977 and related agreements.

(b) The Ombudsman shall make findings and render assistance with respect to the complaints, grievances, requests, and suggestions submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Commission or any other department or agency of the United States, including the Smithsonian Institution.

(c) The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this Act, any other provision of law, or any Federal regulation.

(d) The Ombudsman shall be a citizen of the United States.

(e) The Office of Ombudsman shall terminate upon the termination of dhe Panama Canal Treaty of 1977.

CHAPTER 2—EMPLOYEES

Subchapter I—Panama Canal Commission Personnel

DEFINITIONS

Sec. 1201. As used in this chapter—

(1) "Executive agency" has the meaning given that term in section 105 of title 5, United States Code;

(2) "uniformed services" has the meaning given the term in section 2101(3) of title 5, United States Code;

(3) "competitive service" has the meaning given that term in section 2102 of title 5, United States Code; and

(4) "United States" when used in a geographic sense, means each of the several States and the District of Columbia.

APPOINTMENT AND COMPENSATION; DUTIES

Sec. 1202. (a) In accordance with this chapter, the Panama Canal Commission may appoint without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service, fix the compensation of, and define the authority and duties of, officers, agents, attorneys, and employee (other than the Administrator, Deputy Administrator, and Chief Engineer) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

(b) Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals serving in the uniformed services, may, if appointed under this section or section 1103 or 1104 of this Act, serve as officers or employees of the Commission.

Sec. 1203. (a) The head of any agency may enter into agreements for the transfer or detail to the Commission of any employee of that agency serving under a permanent appointment. Any employee who so transfers or is so detailed shall, upon completion of the employee's tour of duty with the Commission, be entitled to reemployment with the agency from which the employee was transferred or detailed without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had the employee not been so transferred or been so detailed.

(b) For purposes of this section, the term "agency" means an Executive agency, the United States Postal Service, and the Smithsonian Institution.

(c) The Office of Personnel Management shall prescribe regulations to carry out the purposes of this section.

COMPENSATION OF INDIVIDUALS IN THE UNIFORMED SERVICES

Sec. 1204. (a) Except as provided in subsection (b) of this section, any individual who is serving in a position in the Commission and who is a member of a uniformed service shall continue to be paid basic pay by such uniformed service and shall not be paid by the Commission for the period of the service in the uniformed service involved.

(b) If the individual appointed as Administrator, Deputy Administrator, or Chief Engineer of the Commission is a member of a uniformed service, the amount of basic pay otherwise payable to the individual for service in that position shall be reduced, up to the amount of that basic pay, by the amount of the basic pay payable to the individual as a member of a uniformed service.

(c) The Commission shall annually pay to each uniformed service amounts sufficient to reimburse that uniformed service for any basic pay paid by that uniformed service to any member of that service during any period of service in the Commission by the member.

DEDUCTION FROM BASIC PAY OF AMOUNTS DUE FOR SUPPLIES OR SERVICES

Sec. 1205. The Commission may deduct from the basic pay otherwise payable by the Commission to any officer or employee of the Commission any amount due from the officer or employee to the Commission or to any contractor of the Commission for transportation, board, supplies, or any other service. Any amount so deducted may be paid by the Commission to any contractor to whom it is due or may be credited by the Commission to any appropriation from which the Commission has expended such amount.

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COST OF LIVING ALLOWANCE

Sec. 1206. Effective beginning October 1, 1984, each officer and employee of the Commission who is a citizen of the United States and was employed by the Panama Canal Company or the Canal Zone Government on September 30, 1979, or who is an individual of any nationality recruited outside the Republic of Panama after September 30, 1979, may be paid an allowance to offset any increased cost of living which may result from the termination of the eligibility of the officer or employee and his dependents to use military postal services, sales stores, and exchanges. The amount of the allowance may be determined by the Commission.

EDUCATIONAL TRAVEL BENEFITS

Sec. 1207. (a) The Commission shall provide by regulation for round-trip transportation between the Republic of Panama and the United States or, in the case of an employee described in paragraph (2) of this subsection, between the Republic of Panama and the country in which such employee is recruited, for undergraduate college education for dependents of employees of the Commission who—

(1) are United States citizens who were employed by the Panama Canal Company or the Canal Zone Government on September 30, 1979, or

(2) are recruited outside the Republic of Panama after that date.

(b) The regulations prescribed by the Commission under this section shall—

(1) provide eligibility requirements which must be met by such dependents to qualify for transportation under this section, including a requirement that all eligible dependents must be under 23 years of age; and

(2) limit the transportation provided to one round trip during any one-year period.

PRIVILEGES AND IMMUNITIES OF CERTAIN EMPLOYEES

Sec. 1208. The Secretary of Defense shall designate those officers and employees of the Commission and other individuals entitled to the privileges and immunities accorded under paragraph 3 of Article VIII of the Panama Canal Treaty of 1977. The Department of State shall furnish to the Republic of Panama a list of the names of such officers, employees, and other individuals and shall notify the Republic of Panama of any subsequent additions to or deletions from the list.

INAPPLICABILITY OF CERTAIN BENEFITS TO CERTAIN NONCITIZENS

Sec. 1209. (a) Chapter 81 of title 5, United States Code, relating to compensation for work injuries, chapter 83 of such title 5, relating to civil service retirement, chapter 87 of such title 5, relating to life insurance, and chapter 89 of such title 5, relating to health insurance, are inapplicable to any individual—

(1) who is not a citizen of the United States;

(2) whose initial appointment by the Commission occurs after October 1, 1979; and

(3) who is covered by the Social Security System of the Republic of Panama pursuant to any provision of the Panama Canal Treaty of 1977 and related agreements.

(b) Subparagraph (B) of section 8701(a) of title 5, United States Code, defining the term employee for purposes of life insurance, is amended to read as follows:

"(B) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone; or".

(c) Clause (ii) of section 8901(1) of title 5, United States Code, defining the term employee for purposes of health insurance, is amended to read as follows:

"(ii) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone;".

Subchapter II—Wage and Employment Practices

DEFINITIONS

Sec. 1211. As used in this subchapter—

(a) "agency" means—

(A) the Commission, and

(B) an Executive agency or the Smithsonian Institution, to the extent of any election in effect under section 1212(b)(2) of this Act;

(2) "position" means a civilian position in the Commission, or in any other agency if a substantial portion of the duties and responsibilities are performed in the Republic of Panama; and

(3) "employee" means an individual serving in a position.

PANAMA CANAL EMPLOYMENT SYSTEM; MERIT AND OTHER EMPLOYMENT REQUIREMENTS

Sec. 1212. (a) After considering any recommendations of the Commission, the President shall establish a Panama Canal Employment System. The Panama Canal Employment System shall—

(1) be established in accordance with and be subject to the provisions of the Panama Canal Treaty of 1977 and related agreements, the provisions of this chapter, and any other applicable provision of law;

(2) be based on the consideration of the merit of each employee or candidate for employment and the qualifications and fitness of the employee to hold the position concerned;

(3) conform, to the extent practicable and consistent with the provisions of this Act, to the policies, principles, and standards applicable to the competitive service; and

(4) in the case of employees who are citizens of the United States, provide for the appropriate interchange of those employees between positions under the Panama Canal Employment System and positions in the competitive service.

(b)(1) The Commission, and any Executive agency and the Smithsonian Institution to the extent of any election under paragraph (2) of this subsection, shall conduct their employment and pay practices relating to employees in accordance with the Panama Canal Employment System and regulations prescribed by, or under the authority of, the President in accordance with this subchapter.

(2) The head of any Executive agency and the Smithsonian Institution may elect to have the Panama Canal Employment System made applicable in whole or in part to personnel of that agency in the Republic of Panama.

(c) Subject to the provisions of this chapter, the President may, from time to time and after considering any recommendation of the Commission, amend or modify any provision of the Panama Canal Employment System, including any provision relating to selection for appointment, reappointment, reinstatement, reemployment, and retention, with respect to positions, employees, and candidates for employment.

(d) The President may, to the extent the President determines appropriate—

(1) exclude any employee or position from coverage under any provision of this subchapter; and

(2) notwithstanding section 1202 of this Act, extend to any employee, whether or not the employee is a citizen of the United States, the rights and privileges which are provided by applicable laws and regulations for citizens of the United States employed in the competitive service.

EMPLOYMENT STANDARDS

Sec. 1213. The head of each agency shall establish written standards for—

(1) determining the qualifications and fitness of employees and of candidates for employment in positions; and

(2) selecting individuals for appointment, promotion, or transfer to positions.

The standards shall conform to the provisions of this subchapter, any regulations prescribed thereunder, and the Panama Canal Employment System.

INTERIM APPLICATION OF CANAL ZONE MERIT SYSTEM

Sec. 1214. Notwithstanding any repeal made by this Act or any provision of this chapter, the provisions of subchapter III of chapter 7 of title 2 of the Canal Zone Code establishing the Canal Zone Merit System, together with the regulations prescribed thereunder, as in effect on September 30, 1979, shall continue in effect and shall apply with respect to employees until the Panama Canal Em-

ployment System is established and in effect pursuant to section 1212 of this Act.

BASIC PAY

Sec. 1215. (a) The head of each agency, in accordance with the provisions of this subchapter, shall establish, and from time to time may revise, the rates of basic pay for positions and employees in the agency.

(b) The rates of basic pay may be established and revised in relation to the rates of basic pay for the same or similar work performed in the United States or in such areas outside the United States as may be designated in the regulations prescribed under section 1223 of this Act.

(c) The head of each agency may make adjustments in rates of basic pay established under subsection (b) of this section in amounts not to exceed the amounts of the adjustments made from time to time by or under statute in the corresponding rates of basic pay for the same or similar work referred to in such subsection (b). The head of the agency may designate the effective date of any such adjustment, except that the date may not be earlier than the effective date of the adjustment in the corresponding rate of basic pay.

UNIFORM APPLICATION OF STANDARDS AND RATES

Sec. 1216. The standards established pursuant to section 1213 of this Act and the rates of basic pay established pursuant to section 1215 of the Act shall be applied without regard to whether the employee or individual concerned is a citizen of the United States or a citizen of the Republic of Panama.

RECRUITMENT AND RETENTION REMUNERATION

Sec. 1217. (a) In addition to basic pay, additional compensation may be paid, in such amounts as the head of the agency concerned determines, as an overseas recruitment or retention differential to any individual who—

(1) before October 1, 1979, was employed by the Panama Canal Company, by the Canal Zone Government, or by any other agency in the area then known as the Canal Zone;

(2) is an employee who was recruited on or after October 1, 1979, outside of the Republic of Panama for placement in the Republic of Panama; or

(3) is a medical doctor employed by the Department of Defense in the Republic of Panama or by the Commission;

if, in the judgment of the head of the agency concerned, the recruitment or retention of the individual is essential.

(b) Any employee described in more than one paragraph of subsection (a) of this section may qualify for a recruitment or retention differential under only one of those paragraphs.

(c) Additional compensation provided under this section may not exceed 25 percent of the rate of basic pay for the same or similar work performed in the United States by individuals employed by the Government of the United States.

(d) Subchapter III of chapter 59 of title 5, United States Code, relating to overseas differentials and allowances, shall not apply with respect to any employee whose permanent duty station is in the Republic of Panama and who is employed by an agency.

BENEFITS BASED ON BASIC PAY

Sec. 1218. For the purposes of determining—

(1) amounts of compensation for disability or death under chapter 81 of title 5, United States Code, relating to compensation for work injuries;

(2) benefits under subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement;

(3) amounts of insurance under chapter 87 of title 5, United States Code, relating to life insurance;

(4) amounts of overtime pay or other premium pay;

(5) annual leave benefits; and

(6) any other benefits related to basic pay;

the basic pay of each employee shall include the rate of basic pay established for his position under section 1215 of this Act plus the amount of any additional compensation provided under section 1217 of this Act.

SALARY PROTECTION UPON CONVERSION OF PAY BASE

Sec. 1219. (a) In the case of any employee whose rate of basic pay is determined in relation to rates of basic pay for the same or similar work in the United States and which is converted to a rate of basic pay pursuant to section 1215(b) of this Act which is determined in relation to rates in areas other than the United States pursuant to such section 1215(b), the employee shall continue to receive a rate of basic pay not less than that to which the employee was entitled immediately before the conversion.

(b) This section shall cease to apply with respect to any employee if the employee is placed in a position—

(1) for which the rate of basic pay is determined in relation to rates of basic pay in the United States pursuant to section 1215(b) of this Act; or

(2) which is of a lower grade.

REVIEW AND ADJUSTMENT OF CLASSIFICATIONS, GRADES, AND PAY LEVEL

Sec. 1220. An employee may request at any time that the employee's agency—

(1) review the classification of the employee's position or the grade or pay level for the employee's position, or both; and

(2) revise or adjust that classification, grade or pay level, or both, as the case may be.

The request for review and revision or adjustment shall be submitted and adjudicated in accordance with the regularly established appeals procedures of the agency.

PANAMA CANAL BOARD OF APPEALS; DUTIES

Sec. 1221. (a) Subject to the provisions of this chapter, the President shall prescribe regulations establishing a Panama Canal Board of Appeals. The regulations shall provide for the number of members of the Board and their appointment, compensation, and terms of office, the selection of a Chairman of the Board, the appointment and compensation of the Board's employees, and other appropriate matters relating to the Board.

(b) The Board shall review and determine the appeals of employees in accordance with section 1222 of this Act. The decisions of the Board shall conform to the provisions of this subchapter.

APPEALS TO BOARD; PROCEDURES; FINALITY OF DECISIONS

Sec. 1222. (a) An employee may appeal to the Panama Canal Board of Appeals from an adverse determination made by an agency under section 1220 of this Act. The appeal shall be made in writing within a reasonable time (as specified in regulations prescribed by, or under the authority of, the President) after the date of the transmittal by the agency to the employee of written notice of the adverse determination.

(b) The Board may authorize, in connection with an appeal pursuant to subsection (a) of this section, a personal appearance before the Board by the employee, or by a representative of the employee designated for that purpose.

(c) After investigation and consideration of the evidence submitted, the Board shall—

(1) prepare a written decision on the appeal;

(2) transmit its decision to the agency concerned; and

(3) transmit copies of the decision to the employee concerned or to the designated representative.

(d) The decision of the Board on any question or other matter relating to an appeal is final and conclusive. The agency concerned shall take action in accordance with the decision of the Board.

ADMINISTRATION BY THE PRESIDENT

Sec. 1223. (a) The President shall prescribe regulations necessary and appropriate to carry out the provisions of this subchapter and coordinate the policies and activities of agencies under this subchapter.

(b) The President may establish an office within the Commission as the successor to the Canal Zone Central Examining Office. The purpose of the office shall be to assist the President in—

(1) carrying out the President's coordination responsibility under subsection (a) of this section; and

(2) implementing the provisions of the Panama Canal Treaty of 1977 and related agreements with respect to recruitment, examination, determination of qualification standards and similar matters.

(c) The President may delegate any authority vested in the President by this subchapter and may provide for the redelegation of that authority.

APPLICABILITY OF CERTAIN LAWS

Sec. 1224. This chapter does not affect the applicability of—

(1) the provisions of title 5, United States Code, which relate to preference eligibles;

(2) the provisions of title 5, United States Code, which relate to removal or suspension from the competitive service; and

(3) the provisions of section 5544(a) of title 5, United States Code, which relate to wage-board overtime and Sunday rates, with respect to classes of employees who were covered by those provisions on the date of the enactment of this Act.

MINIMUM LEVEL OF PAY; MINIMUM ANNUAL INCREASES

Sec. 1225. (a) Subsection (f) of section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(f)), relating to applicability to employees in foreign countries and certain United States possessions, is amended by striking out "Johnston Island, and the Canal Zone." and inserting in lieu thereof "and Johnston Island.".

(b)(1) Effective October 1, 1979, each individual employed by an Executive agency or the Smithsonian Institution, whose permanent duty station is located within an area or installation in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, shall be paid basic pay at a rate of not less than $2.90 an hour.

(2) Effective on October 1 of each succeeding calendar year, the rate of basic pay for each individual referred to in paragraph (1) of this subsection whose basic pay is not fixed in relation to rates of basic pay for the same or similar work performed in the United States shall be increased by an amount equal to not less than 2 percent of the rate of basic pay for that individual in effect immediately before that date.

Subchapter III—Conditions of Employment and Placement

TRANSFERRED OR REEMPLOYED EMPLOYEES

Sec. 1231. (a)(1) With respect to any individual employed in the Panama Canal Company or the Canal Zone Government—

(A) who is transferred—

(i) to a position in the Commission; or

(ii) to a position in an Executive agency or in the Smithsonian Institution the permanent duty station of which is in the Republic of Panama (including the area known before October 1, 1979, as the Canal Zone); or

(B) who is separated by reason of a reduction in force on September 30, 1979, and is appointed to a position in the Commission before April 1, 1980;

the terms and conditions of employment set forth in paragraph (2) of this subsection shall be generally no less favorable, on or after the date of the transfer referred to in subparagraph (A) of this paragraph or the date of the appointment referred to in subparagraph (B) of this paragraph, as the case may be, than the terms and conditions of employment with the Panama Canal Company and Canal Zone Government on September 30, 1979, or, in the case

of a transfer described in subparagraph (A)(ii) of this paragraph which takes place before that date, on the date of the transfer.

(2) The terms and conditions of employment referred to in paragraph (1) of this subsection are the following:

(A) rates of basic pay;
(B) tropical differential;
(C) premium pay and night differential;
(D) reinstatement and restoration rights;
(E) injury and death compensation benefits;
(F) leave and travel;
(G) transportation and repatriation benefits;
(H) group health and life insurance;
(I) reduction-in-force rights;
(J) an employee grievance system, and the right to appeal adverse and disciplinary actions and position classification actions;
(K) veterans' preference eligibility;
(L) holidays;
(M) saved pay provisions; and
(N) severance pay benefits.

(3)(A) The provisions of this subsection shall take effect on the date of the enactment of this Act.[2]

(B) No spending authority (as described in section 401(c)(2)(C) of the Congressional Budget Act of 1974) provided for under this subsection shall take effect before October 1, 1979.

(C) Effective October 1, 1979, any individual who, but for subparagraph (B) of this paragraph, would have been entitled to one or more payments pursuant to this subsection for periods before October 1, 1979, shall be entitled, to the extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such payments.

(b) Any individual described in subsection (a)(1)(B) of this section who would have met the service requirement for early retirement benefits under section 8336(i) or 8339(d)(2) of title 5, United States Code (as amended by sections 1241(a) and 1242 of this Act, respectively), but for a break in service of more than 3 days immediately after September 30, 1979, shall be considered to meet that requirement. Any break in service by any such individual for purposes of section 8332 of such title 5 during the period beginning September 30, 1979, and ending on the date of the appointment referred to in such subsection (a)(1)(B) shall be considered a period of creditable service under such section 8332 for such individual, except that such period shall not be taken into account for purposes of determining average pay (as defined in section 8331(4) of such title 5) and no deduction, contribution, or deposit shall be required for that period under section 8334 of such title 5.

(c)(1) Section 5(c) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 903(c)) shall not apply with respect to any teacher who was employed by the Canal Zone Government school system on September 30, 1979, and who was transferred from such position to a teaching position which is under the Department of Defense Overseas Dependent School

[2] Sept. 27, 1979.

System and the permanent duty station of which is in the Republic of Panama, until the rates of basic compensation established under section 5(c) of such Act equal or exceed the rates of basic compensation then in effect for teachers who were so transferred.

(2) Section 6(a)(2) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 904(a)(2)) shall not apply with respect to any teacher who was employed by the Canal Zone Government school system on September 30, 1979, and who was transferred from such position to a teaching position which is under the Department of Defense Overseas Dependent School System and the permanent duty station of which is in the Republic of Panama.

(3)(A) The head of a department or agency of the United States may grant a sabbatical to any teacher to whom paragraph (1) of this subsection applies for not to exceed 11 months in order to permit the teacher to engage in study or uncompensated work experience which is in the United States and which will contribute to the teacher's development and effectiveness. Basic compensation shall be paid to teachers on sabbatical under this section in the same manner and to the same extent as basic compensation would have been paid to teachers on sabbatical while employed in the Canal Zone Government school system on the day before the effective date of this Act. A sabbatical shall not result in a loss of, or reduction in, leave to which the teacher is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the department or agency may authorize in accordance with chapter 57 of title 5, United States Code, such travel expenses (including per diem allowance) as the head of the department or agency may determine to be essential for the study or experience.

(B) A sabbatical under this paragraph may not be granted to any teacher—

(i) more than once in any 10-year period;

(ii) unless the teacher has completed 7 years of service as a teacher; and

(iii) if the teacher is eligible for voluntary retirement with a right to an immediate annuity.

(C)(i) Any teacher in a department or agency of the United States may be granted a sabbatical under this paragraph only if the teacher agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of two consecutive years.

(ii) Each agreement required under clause (i) of this subparagraph shall provide that in the event the teacher fails to carry out the agreement (except for good and sufficient reason as determined by the head of the department or agency that granted the sabbatical), the teacher shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d) Sections 5595(a)(2)(iii), 5724a(a) (3) and (4), and 8102(b) of title 5, United States Code, are each amended by striking out "Canal Zone" each place it appears and inserting in lieu thereof "areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and

related agreements (as described in section 3(a) of the Panama Canal Act of 1979)".

PLACEMENT

Sec. 1232. (a) Any citizen of the United States—

(1) who, on March 31, 1979, was an employee of the Panama Canal Company or the Canal Zone Government;

(2) who separates or is scheduled to separate on or after such date for any reason other than misconduct or delinquency; and

(3) who is not placed in another appropriate position in the Government of the United States in the Republic of Panama;

shall, upon the employee's request, be accorded appropriate assistance for placement in vacant positions in the Government of the United States in the United States.

(b) Any citizen of the United States—

(1) who, on March 31, 1979, was employed in the Canal Zone as an employee of an Executive agency (other than the Panama Canal Company or the Canal Zone Government) or the Smithsonian Institution;

(2) whose position is eliminated as the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; and

(3) who is not appointed to another appropriate position in the Government of the United States in the Republic of Panama;

shall, upon the employee's request, be accorded appropriate assistance for placement in vacant positions in the Government of the United States in the United States.

(c) The Office of Personnel Management shall establish and administer a Government-wide placement program for all eligible employees who request appointment to positions under this section.

(d) The provisions of this section shall take effect on the date of the enactment of this Act.[3]

Subchapter IV—Retirement

EARLY RETIREMENT ELIGIBILITY

Sec. 1241. (a) Section 8336 of title 5, United States Code, is amended—

(1) in subsection (c), by inserting "(1)" after "(c)" and by adding at the end thereof the following new paragraph:

"(2) An employee is entitled to an annuity if the employee—

"(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

"(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years."; and

[3] Sept. 27, 1979.

(2) by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i)(1) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed by the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if the employee is separated—

"(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

"(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

"(2) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed, at a permanent duty station in the Canal Zone, by any Executive agency other than the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if—

"(A) the employee is separated involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service; and

"(B) the separation is the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements.

"(3) For the purpose of this subsection—

"(A) 'Panama Canal service' means—

"(i) service as an employee of the Canal Zone Government, the Panama Canal Company, or the Panama Canal Commission; or

"(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or the Republic of Panama; and

"(B) 'Executive agency' includes the United States District Court for the District of the Canal Zone and the Smithsonian Institution.".

(b)(1) The amendments made by this section shall take effect on the date of the enactment of this Act, but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.

(2) Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection, would have been entitled to one or more annuity payments pursuant to the amendments made by this

section for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.

EARLY RETIREMENT COMPUTATION

Sec. 1242. (a) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraphs:

"(2) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date disregarding any break in service of not more than 3 days, by adding—

"(A) 2½ percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

"(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

"(3)(A) In the case of an employee who has service as a law enforcement officer or firefighter to which paragraph (2) of this subsection applies, the annuity of that employee is increased by $8 for each full month of that service which is performed in the Republic of Panama.

"(B) In the case of an employee retiring under this subchapter who—

"(i) was employed as a law enforcement officer or firefighter by the Panama Canal Company or Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

"(ii) does not meet the age and service requirements of section 8336(c) of this title;

the annuity of that employee is increased by $12 for each full month of that service which occurred before October 1, 1979.

"(C) An annuity increase under this paragraph does not apply with respect to service performed after completion of 20 years of service (or any combination of service) as a law enforcement officer or firefighter.

"(4) For the purpose of this subsection—

"(A) 'Panama Canal service' means—

"(i) service as an employee of the Panama Canal Commission; or

"(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or Republic of Panama; and

"(B) 'Executive agency' includes the Smithsonian Institution.".

(b)(1) The amendments made by this section shall take effect on the date of the enactment of this Act, but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.

(2) Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection, would have been entitled to one or more annuity payments pursuant to the amendments made by this section for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.

RETIREMENT UNDER SPECIAL TREATY PROVISIONS

Sec. 1243. (a)(1) Subject to subsection (b) of this section, and under such regulations as the President may prescribe, the Secretary of the Treasury shall pay to the Social Security System of the Republic of Panama, out of funds deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund under section 8334(a)(2) of title 5, United States Code, such sums of money as may be necessary to aid in the purchase of a retirement equity in such System for each individual who—

(A) meets the requirements of paragraph (2) of this subsection;

(B) is separated from employment in the Panama Canal Company, the Canal Zone Government, or the Commission by reason of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; and

(C) becomes employed in a position covered by the Social Security System of the Republic of Panama through the transfer of a function or activity to the Republic of Panama from the United States or through a job placement assistance program.

(2) This subsection applies with respect to any individual only if the individual—

(A) has been credited with at least 5 years of civilian service under section 8332 of title 5, United States Code, relating to creditable service for purposes of civil service retirement;

(B) is not eligible for an immediate retirement annuity under chapter 83 of title 5, United States Code, relating to civil service retirement, and elects not to receive a deferred annuity under that chapter based on any portion of that service; and

(C) elects to withdraw from the Civil Service Retirement and Disability Fund the individual's entire lump-sum credit (as defined in section 8331(8) of title 5, United States Code) and to transfer that amount to the Social Security System of the Republic of Panama pursuant to the special regime referred to in paragraph 3 of Article VIII of the Agreement in implementation of Article III of the Panama Canal Treaty of 1977.

(b) The amount paid to the Social Security System of the Republic of Panama with respect to any individual under subsection (a) of this section shall not exceed the individual's entire lump-sum credit (as so defined).

(c)(1) Pursuant to paragraph 2(b) of Annex C to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, the President, or the President's designee, shall purchase from a source determined by the President to be appropriate, in accordance with such regulations as the President or the President's designee may prescribe, and to such extent or in such amounts as may

be provided in advance in appropriation Acts, a nontransferable deferred annuity for the benefit of each employee of an agency or instrumentality of the Government of the United States in the Republic of Panama—

(A) who is not a citizen of the United States;

(B) who was employed on October 1, 1979, and during any period before that date by an agency or instrumentality of the Government of the United States at any permanent duty station in the Republic of Panama (including, with respect to employment before that date, the area then known as the Canal Zone);

(C) who, for any period of service with such agency or instrumentality before October 1, 1979, at any such permanent duty station was not covered, by reason of that service, by the United States Civil Service Retirement System or any other Federal retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama; and

(D) who on October 1, 1979, is under a Federal retirement system and, on or before that date, has accrued in one or more agencies or instrumentalities of the United States a total of 5 years or more of service which—

(i) is creditable toward any Federal retirement system as in effect on October 1, 1979;

(ii) would have been creditable toward any such retirement system if the retirement system were in effect at the time of the service accrued by the employee; or

(iii) consists of any combination of service described in clauses (i) and (ii) of this subparagraph.

(2) The retirement annuity referred to in paragraph (1) of this subsection with respect to any employee will cover retroactivity, from October 1, 1979, all periods of service, described in subparagraph (D) of that paragraph, by that employee at any permanent duty station in the Republic of Panama (including the area known before that date as the Canal Zone) in agencies and instrumentalities of the Government of the United States during which that employee was not covered by the United States Civil Service Retirement System or any other Federal retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama.

OBLIGATION OF COMMISSION FOR UNFUNDED LIABILITY

Sec. 1244. Section 8348 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(i)(1) Notwithstanding any other provision of law, the Panama Canal Commission shall be liable for that portion of any estimated increase in the unfunded liability of the fund which is attributable to any benefits payable from the Fund to or on behalf of employees and their survivors to the extent attributable to the amendments made by sections 1241 and 1242, and the provisions of sections 1231(b) and 1243(a)(1), of the Panama Canal Act of 1979.

"(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the

Office of Personnel Management. The Secretary of the Treasury shall pay to the Fund from appropriations for that purpose the amount so determined in annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.".

CASH RELIEF TO CERTAIN FORMER EMPLOYEES

Sec. 1245. (a) The Commission, under the regulations prescribed by the President pursuant to the Act entitled "An Act authorizing cash relief for certain employees of the Panama Canal not coming within the provisions of the Canal Zone Retirement Act", approved July 8, 1937, as amended (50 Stat. 478; 68 Stat. 17), may continue the payments of cash relief to those individual former employees of the Canal Zone Government or Panama Canal Company or their predecessor agencies not coming within the scope of the former Canal Zone Retirement Act whose services were terminated prior to October 5, 1958, because of unfitness for further useful service by reason of mental or physical disability resulting from age or disease. Subject to subsection (b) of this section, that cash relief may not exceed $1.50 per month for each year of service of the employees so furnished relief, with a maximum of $45 per month, plus the amount of any cost-of-living increases in such cash relief granted before October 1, 1979, pursuant to section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), nor be paid to any employee who, at the time of termination for disability prior to October 5, 1958, had less than 10 years' service with the Canal Zone Government, the Panama Canal Company, or their predecessor agencies on the Isthmus of Panama.

(b) An additional amount of $20 per month shall be paid to each person who receives payment of cash relief under subsection (a) of this section and shall be allowed without regard to the limitations contained therein.

(c) Each cash relief payment made pursuant to this section shall be increased on the same effective date and by the same percent, adjusted to the nearest dollar, as civil service retirement annuities are increased under the cost-of-living adjustment provisions of section 8340(b) of title 5, United States Code. Such increase shall apply only to cash relief payments made after October 1, 1979, as increased by annuity increases made after that date under such section 8340(b).

(d) The Commission may pay cash relief to the widow of any former employee of the Canal Zone Government or the Panama Canal Company who, until the time of his death, receives or has received cash relief under subsection (a) of this section, under section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), or under the Act of July 8, 1937, referred to in such subsection (a). The term "widow" as used in this subsection includes only the following:

(1) a woman legally married to such employee at the time of his termination for disability and at his death;

(2) a woman who, although not legally married to such former employee at the time of his termination, had resided continuously with him for at least five years immediately pre-

ceding the employee's termination under such circumstances as would at common law make the relationship a valid marriage and who continued to reside with him until his death; and

(3) a woman who has not remarried or assumed a common-law relationship with any other person.

Cash relief granted to such a widow shall not at any time exceed 50 percent of the rate at which cash relief, inclusive of any additional payment under subsection (b) of this section, would be payable to the former employee were he then alive.

(e) Subchapter III of chapter 83 of title 5, United States Code, applies with respect to those individuals who were in the service of the Canal Zone Government or the Panama Canal Company on October 5, 1958, and who, except for the operation of section 13(a)(1) of the Act entitled "An Act to implement item 1 of a Memorandum of Understanding attached to the treaty of January 25, 1955, entered into by the Government of the United States of America and the Government of the Republic of Panama with respect to wage and employment practices of the Government of the United States of America in the Canal Zone", approved July 25, 1958 (72 Stat. 405), would have been within the classes of individuals subject to the Act of July 8, 1937, referred to in subsection (a) of this section.

APPLIANCES FOR EMPLOYEES INJURED BEFORE SEPTEMBER 7, 1916

Sec. 1246. Artificial limbs or other appliances may be purchased by the Commission, out of any funds appropriated to the Commission, for persons who were injured in the service of the Isthmian Canal Commission or of the Panama Canal before September 7, 1916.

Subchapter V—Leave

LEAVE FOR JURY OR WITNESS SERVICE

Sec. 1251. Section 6322(a) of title 5, United States Code, is amended—

(1) by striking out "the Canal Zone, or"; and

(2) by striking out "Islands." and inserting in lieu thereof "Islands, or the Republic of Panama.".

Subchapter VI—Application to Related Personnel

LAW ENFORCEMENT; CANAL ZONE CIVILIAN PERSONNEL POLICY COORDINATION BOARD; RELATED EMPLOYEES

Sec. 1261. (a) For the purposes of sections 1206, 1231, 1232, 1241, and 1242 of this Act, including any amendment made by those sections, the United States Attorney for the District of the Canal Zone and the Assistant United States Attorneys and their clerical assistants, and the United States Marshal for the District of the Canal Zone and his deputies and clerical assistants shall be considered employees of the Commission.

(b) For the purposes of this Act, including any amendment made by this Act, the Executive Director of the Canal Zone Civilian Personnel Policy Coordinating Board, the Manager, Central Examin-

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ing Office, and their staffs shall be considered to have been employees of the Panama Canal Company with respect to service in those positions before October 1, 1979, and as employees of the Commission with respect to service in those positions on or after that date.

(c) The provisions of this section shall take effect on the date of the enactment of this Act.

Subchapter VII—Labor-Management Relations

LABOR-MANAGEMENT RELATIONS

Sec. 1271. (a) Nothing in this Act shall be construed to affect the applicability of chapter 71 of title 5, United States Code, relating to labor-management and employee relations, with respect to the Commission or the operations of any other Executive agency conducted in that area of the Republic of Panama which, on September 30, 1979, was the Canal Zone, except that in applying those provisions—

(1) the definition of "employee" shall be applied without regard to clause (i) of section 7103(a)(2) of such title 5 which relates to nationality and citizenship; and

(2) a unit shall be considered to be appropriate notwithstanding the fact that it includes any supervisor if that supervisor's position (or type of position) was, before October 1, 1979, represented before the Panama Canal Company by a labor organization that included employees who were not supervisors.

(b) Labor-management and employee relations of the Commission, other Executive agencies, and the Smithsonian Institution, their employees, and organizations of those employees, in connection with operations conducted in that area of the Republic of Panama which, on September 30, 1979, was the Canal Zone, shall be governed and regulated solely by the applicable laws, rules, and regulations of the United States.

Chapter 3—Funds and Accounts

Subchapter I—Funds

CANAL ZONE GOVERNMENT FUNDS

Sec. 1301. On the effective date of this Act, any unexpended balances of the appropriation accounts appearing on the books of the United States Government as "Operating Expenses, Canal Zone Government (38–0116–0–1–806)" and "Capital Outlay, Canal Zone Government (38–0116–0–1–806)" shall be covered into the general fund of the Treasury, and any appropriations to which expenditures under such accounts have been chargeable before such effective date are repealed. The Commission may, to such extent or in such amounts as are provided in Appropriation Acts to the Commission for such purpose, pay claims or make payments chargeable to such accounts, upon proper audit of such claims or payments. There are authorized to be appropriated to the Commission such funds as may be necessary to pay claims and make payments pursuant to this section.

PANAMA CANAL COMPANY FUNDS; COMMISSION FUNDS

Sec. 1302. (a) On the effective date of this Act, the account appearing on the books of the United States Government as the "Panama Canal Company Fund (38-4060-0-3-403)" shall be terminated, and any unexpended balances under such account as of that date shall be covered into the Treasury in an account to be known as the "Panama Canal Commission Fund".

(b) On or after the effective date of this Act, tolls for the use of the Panama Canal and all other receipts of the Commission that, before such effective date, would have been credited to the account appearing on the books of the Government as the "Panama Canal Company Fund (38-4060-0-3-403)" shall be deposited in the Treasury in the Panama Canal Commission Fund.

(c)(1) No funds may be appropriated to or for the use of the Commission, nor may any funds to be obligated or expended by the Commission for any fiscal year, unless such appropriation, obligation, or expenditure has been specifically authorized by law.

(2) No funds may be appropriated to or for the use of the Commission for any fiscal year in excess of (A) the amount of revenues deposited in the Panama Canal Commission Fund during such fiscal year, as such amount is estimated by the Secretary of Defense and certified by the Comptroller General of the United States at the time the budget request for the Commission for such fiscal year is submitted to the Congress, plus (B) the amount of revenues deposited in such Fund prior to such fiscal year and remaining unexpended at the beginning of such fiscal year. Not later than thirty days after the end of such fiscal year, the Secretary of the Treasury shall report to the Congress the actual amount of revenue deposited in the Panama Canal Commission Fund during such fiscal year.

(d) The Commission may, to such extent or in such amounts as are provided in advance in appropriation Acts, enter into contracts in order to carry out its functions.

(e)(1) It is the sense of the Congress that the additional costs resulting from implementation of the Panama Canal Treaty of 1977 and related agreements should be kept to the absolute minimum level. To this end, the Congress declares that the direct appropriated costs of implementation to be borne by the taxpayers over the life of such Treaty should be kept to a level no greater than the March 1979 estimate of those costs ($870,700,000) presented to the Congress by the executive branch during consideration of this Act by the Congress, less personnel retirement costs of $205,000,000, which were subtracted and charged to tolls, therefore resulting in the net taxpayer cost of approximately $665,700,000, plus appropriate adjustment for inflation.

(2) It is further the sense of the Congress that the actual costs of implementation be consistent with the obligations of the United States to operate the Panama Canal safely and efficiently and keep it secure.

EMERGENCY FUND

Sec. 1303. (a) On the effective date of this Act, the Secretary of the Treasury shall establish and thereafter shall maintain in the

Treasury a fund to be known as the "Panama Canal Emergency Fund." There are authorized to be appropriated for deposit in such Fund (1) for the fiscal year beginning on October 1, 1979, $40,000,000, and (2) for any fiscal year beginning on or after October 1, 1980, such additional sums as may be specifically authorized by law for such fiscal year.

(b) The Commission may make withdrawals from the Panama Canal Emergency Fund by check in order to defray emergency expenses and to insure the continuous, efficient, and safe operation of the Panama Canal, if funds appropriated for the operation and maintenance of the Canal are insufficient for such purposes. Any withdrawal from such Fund to cover increased costs attributable to unprogrammed increases in traffic may not be made in amounts greater than the revenues from such increased traffic. Such Fund shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977. Any withdrawal from such fund or expenditure made under this subsection shall be reported forthwith by the Commission to the Congress and to the Office of Management and Budget.

Subchapter II—Accounting Policies and Audits

ACCOUNTING POLICIES

Sec. 1311. (a) The Commission shall establish and maintain its accounts pursuant to the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.) and the provisions of this chapter. Such accounts shall specify all revenues received by the Commission, including tolls for the use of the Panama Canal, expenditures for capital replacement, expansion, and improvement, and all costs of maintenance and operation of the Panama Canal and of its complementary works, installations, and equipment, including depreciation, payments to the Republic of Panama under the Panama Canal Treaty of 1977, and interest on the investment of the United States calculated in accordance with section 1603 of this Act.

(b) The Commission may issue regulations establishing the basis of accounting for the assets which are made available for the use of the Commission. Such regulations may provide for depreciation of the net replacement value of the assets which will ultimately require replacement to maintain the service capacity of the Panama Canal. Such regulations may also provide that depreciation of such assets be recorded ratably over their service lives.

REPORTS

Sec. 1312. The Commission shall, not later than January 31 of each year, submit to the President and the Congress a financial statement and a complete report with respect to the maintenance and operation of the Panama Canal during the preceding fiscal year.

AUDIT BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Sec. 1313. (a) Financial transactions of the Commission shall be audited by the Comptroller General of the United States (hereinafter in this Act referred to as the "Comptroller General") pursu-

ant to the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.). In conducting any audit pursuant to such Act, the appropriate representatives of the Comptroller General shall have access to all books, accounts, financial records, reports, files, and other papers, items, or property in use by the Commission and necessary to facilitate such audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. An audit pursuant to such Act shall first be conducted with respect to the fiscal year in which this Act becomes effective.

(b) The Comptroller General shall, not later than six months after the end of each fiscal year, submit to the Congress a report of the audit conducted pursuant to subsection (a) of this section with respect to such fiscal year. Such report shall set forth the scope of the audit and shall include—

(1) a statement of assets and liabilities, capital, and surplus or deficit, based on the accounts of the Commission established pursuant to this chapter.

(2) a statement of income and expenses,

(3) a statement of sources and application of funds,

(4) a statement listing all direct and indirect costs incurred by the United States in implementing the Panama Canal Treaty of 1977, including the cost of property transferred to the Republic of Panama during each fiscal year, and

(5) such comments and information as the Comptroller General considers necessary to keep the Congress informed of the operations and financial transactions of the Commission, together with such recommendations with respect to such operations and transactions as the Comptroller General considers advisable.

The report shall identify specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried out or made and has not been authorized by law. The Comptroller General shall submit a copy of each such report to the President, the Secretary of the Treasury, and the Commission.

(c) In conducting the audits and preparing the reports provided for in this section and in carrying out his other responsibilities pursuant to law, the Comptroller General shall, with respect to fiscal year 1980, take into account the problems inherent in converting the existing accounting system of the Panama Canal Company to conform to the requirements established in section 1311 of this Act. Accordingly, the Comptroller General shall take no adverse action with respect to the Commission, nor shall any violation of section 3679 of the Revised Statutes (31 U.S.C. 665) be considered to have taken place, so long as the Commission is in substantial compliance with the requirements of this Act. The Comptroller General shall make such recommendations to the Commission and to the Congress as he may consider appropriate to insure that full compliance with the financial controls provided for in the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.) is achieved promptly.

Subchapter III—Interagency Accounts

INTERAGENCY SERVICES; REIMBURSEMENTS

Sec. 1321. (a) The Commission shall reimburse the Employees' Compensation Fund, Bureau of Employee's Compensation, Department of Labor, for the benefit payments to the Commission's employees, and shall also reimburse other Government departments and agencies for payments of a similar nature made on its behalf.

(b) The Department of Defense shall reimburse the Commission for amounts expended by the Commission in maintaining defense facilities in standby condition for the Department of Defense.

(c) Notwithstanding any other provision of law, funds appropriated (for any fiscal year beginning after September 30, 1979) to or for the use of the Department of Defense, or to any other department or agency of the United States as may be designated by the President to carry out the purposes of this subsection, shall be available for—

(1) conducting the educational and health care activities, including kindergartens and college, carried out by the Canal Zone Government and the Panama Canal Company before the effective date of this Act, and

(2) providing the services related thereto to the categories of persons to which such services were provided before such effective date.

Notwithstanding any other provision of law, the Department of Defense, or any department or agency designated by the President to provide health care services to those categories of persons referred to in this subsection, shall provide such services to such categories of persons on a basis no less favorable than that applied to its own employees and their dependents.

(d) Amounts expended for furnishing services referred to in subsection (c) of this section to persons eligible to receive them, less amounts payable by such persons, shall be fully reimbursable to the department or agency furnishing the services, except to the extent that such expenditures are the responsibility of that department or agency. The appropriations or funds of the Commission shall be available for such reimbursements on behalf of—

(1) employees of the Commission, and

(2) other persons authorized to receive such services who are eligible to receive them pursuant to the Panama Canal Treaty of 1977 and related agreements.

The appropriations or funds of any other department or agency of the United States conducting operations in the Republic of Panama, including the Smithsonian Institution, shall be available for reimbursements on behalf of employees of such department or agency and their dependents.

(e) The appropriations or funds of the Commission, or of any other department or agency of the United States conducting operations in the Republic of Panama, shall be available, in accordance with subsection (d) of this section, to defray the cost of—

(1) health care services to elderly or disabled persons who were eligible to receive such services before the effective date of this Act, less amounts payable by such persons, and

(2) educational services provided by schools in the Republic of Panama, which are not operated by the United States, to persons who were receiving such services at the expense of the Canal Zone Government before the effective date of this Act.

(f) For purposes of the reimbursement of the United States by the Republic of Panama for the salaries and other employment costs of employees of the Commission who are assigned to assist the Republic of Panama in the operation of activities which are transferred to that Government as a result of any provision of the Panama Canal Treaty of 1977 and related agreements, which reimbursement is provided for in paragraph 8 of Article 10 of that Treaty, the Commission shall be deemed to be the United States of America.

(g) Notwithstanding any other provision of law, the President, through the appropriate department or agency of the United States, shall, until January 1, 2000, operate the educational institution known as the "Canal Zone College". Such institution shall continue to provide, insofar as practicable, the level of services which it offered immediately before the effective date of this Act.

Subchapter IV—Postal Matters

POSTAL SERVICE

Sec. 1331. (a) The postal service established and governed by chapter 73 of title 2 of the Canal Zone Code shall be discontinued on October 1, 1979.

(b) The provisions of chapter 73 of such title 2 relating to postal-savings deposits, postal-savings certificates, postal money orders, and the accounting for funds shall continue to apply for the purpose of meeting the obligations of the United States concerning outstanding postal savings and money orders and disposition of funds.

(c) The Commission shall take possession of and administer the funds of the postal service referred to in subsection (a) of this section and shall assume its obligations. The Commission and the United States Postal Service may enter into agreements for the transfer of funds or property and the assumption of administrative rights or responsibilities with respect to the outstanding obligations of the postal service referred to in subsection (a) of this section. Any transfer or assumption (including any agreement for such transfer or assumption) pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) Mail addressed to the Canal Zone from or through the continental United States may be routed by the United States Postal Service to the military post offices of the United States Forces in the Republic of Panama. Such military post offices shall provide the required directory services and shall accept such mail to the extent permitted under the Panama Canal Treaty of 1977 and related agreements. The Commission shall furnish personnel, records, and other services to such military post offices to assure wherever appropriate the distribution, rerouting, or return of such mail.

(e)(1) The second sentence of section 403(a) of title 39, United States Code, is amended by striking out "Except as provided in the Canal Zone Code, the" and inserting in lieu thereof "The".

(2) Section 340(b) of such title is amended—

(A) by inserting "or" before "the Virgin Islands"; and

(B) by striking out "or the Canal Zone,".

(3)(A) Section 3402 of such title is repealed.

(B) the table of sections for chapter 34 of title 39, United States Code, is amended by repealing the item relating to section 3402.

(4) Section 3682(b)(5) of such title is amended by striking out "the Canal Zone and".

Subchapter V—Accounts With the Republic of Panama

PAYMENTS TO THE REPUBLIC OF PANAMA

Sec. 1341. (a) The Commission shall pay to the Republic of Panama those payments required under paragraph 5 of Article III and paragraph 4 of Article XIII of the Panama Canal Treaty of 1977. Payments made under paragraph 5 of Article III of such Treaty shall be audited annually by the Comptroller General and any overpayment, as determined in accordance with Understanding (1) incorporated in the Resolution of Ratification of the Panama Canal Treaty (adopted by the United States Senate on April 18, 1978), for the services described in that paragraph which are provided shall be refunded by the Republic of Panama or set off against amounts payable by the United States to the Republic of Panama under paragraph 5 of Article III of the Panama Canal Treaty of 1977.

(b) In determining whether operating revenues exceed expenditures for the purpose of payments to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977, such operating revenues in a fiscal period shall be reduced by (1) all costs of such period as shown by the accounts established pursuant to section 1311 of this Act, and (2) the cumulative sum from prior years (beginning with the year in which the Panama Canal Treaty of 1977 enters into force) of any excess of costs of the Panama Canal Commission over operating revenues.

(c) The President shall not accede to any interpretation of paragraph 1 of Article IX of the Panama Canal Treaty of 1977 which would permit the Republic of Panama to tax retroactively organizations and businesses operating, and citizens of the United States living, in the Canal Zone before the effective date of this Act.

(d) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 at the termination of such Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and nothing in such paragraph may be construed as obligating the United States to pay after the date of the termination of the Treaty any such unpaid balance which has accrued before such date.

(e) As provided in section 1602(b) of this Act, tolls shall not be prescribed at rates calculated to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977. Moreover, no payments may be made to the

Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 unless unexpended funds are used to pay all costs of operation and maintenance of the canal, including but not limited to (1) operating expenses determined in accordance with generally accepted accounting principles, (2) payments to the Republic of Panama under paragraphs 4(a) and 4(b) of such Article XIII and under paragraph (5) of Article III of such Treaty, (3) amounts in excess of depreciation and amortization which are programmed for plant replacement, expansion, and improvements, (4) payments to the Treasury of the United States under section 1603 of this Act, (5) reimbursement to the Treasury of the United States for costs incurred by other departments and agencies of the United States in providing educational, health, and other services to the Commission, its employees and their dependents, and other categories of persons in accordance with section 1321 of this Act, and (6) any costs of Treaty implementation associated with the maintenance and operation of the Panama Canal.

(f) The prohibitions contained in this section and in sections 1302(c) and 1503 of this Act shall apply notwithstanding any other provision of law authorizing transfers of funds between accounts, reprograming of funds, use of funds for contingency purposes, or waivers of prohibitions.

TRANSACTIONS WITH THE REPUBLIC OF PANAMA

Sec. 1342. The Commission may, on a reimbursable basis, provide to the Republic of Panama materials, supplies, equipment, work, or services, including water and electric power, requested by the Republic of Panama, at such rates as may be agreed upon by the Commission and the Republic of Panama. Payment for such materials, supplies, equipment, work, or services may be made by direct payment by the Republic of Panama to the Commission or by offset against amounts due the Republic of Panama by the United States.

DISASTER RELIEF

Sec. 1343. If an emergency arises because of disaster or calamity by flood, hurricane, earthquake, fire, pestilence, or like cause, not foreseen or otherwise provided for, and occurring in the Republic of Panama in such circumstances as to constitute an actual or potential hazard to health, safety, security, or property in the areas and installations made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, the Commission may expend available funds appropriated to the Commission for such purpose, and utilize or furnish materials, supplies, equipment and services for relief, assistance, and protection.

CONGRESSIONAL RESTRAINTS ON PROPERTY TRANSFER AND TAX EXPENDITURES

Sec. 1344. (a) The Congress enacts this section in the exercise of its authority under Article IV, section 3, clause 2 of the Constitution of the United States to dispose of and make necessary rules and regulations with respect to property of the United States.

(b) Prior to the transfer of property of the United States located in the Republic of Panama to the Republic of Panama pursuant to section 1504 of this Act the President shall formally advise the Government of Panama that—

(1) in fulfilling its obligations under the Panama Canal Treaty of 1977, the United States shall make no payments to the Republic of Panama derived from tax revenues of the United States;

(2) the United States retains full discretion and authority to determine whether and the extent to which tax revenues of the United States may be expended in exercising United States rights and carrying out United States responsibilities under the Panama Canal Treaty of 1977 and related agreements;

(3) no tax revenues of the United States shall be made available for obligations and expenditure after the effective date of this Act for purposes of implementing the Panama Canal Treaty of 1977 and related agreements, unless hereafter specifically approved by the Congress through the authorization and appropriation process;

(4) the total amount expended by the Commission from funds appropriated to or for the use of the Commission shall not exceed the total amount deposited in the Panama Canal Commission Fund; and

(5) the foregoing paragraphs of this subsection do not apply to expenditures made by the United States in fulfilling United States obligations to transfer the remains of our honored dead from Mount Hope Cemetery in the former Canal Zone to an appropriate and dignified resting place in accordance with Reservation 3 to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

CHAPTER 4—CLAIMS FOR INJURIES TO PERSONS OR PROPERTY

Subchapter I—General Provisions

SETTLEMENT OF CLAIMS GENERALLY

Sec. 1401. (a) Subject to the provisions of this chapter, the Commission may adjust and pay claims for injury to, or loss of, property or for personal injury or death, arising from the operation of the Panama Canal or related facilities and appurtenances.

(b) No claim for an amount exceeding $50,000 shall be adjusted and paid by the Commission under the provisions of this subchapter.

(c) An award made to a claimant under this section shall be payable out of any moneys appropriated for or made available to the Commission. The acceptance by the claimant of the award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of his claim against the United States and against any employee of the United States acting in the course of his employment who is involved in the matter giving rise to the claim.

(d) Except as provided in section 1416 of this Act, no action for damages on claims cognizable under this chapter shall lie against the United States or the Commission, and no such action shall lie

against any officer or employee of the United States. Neither this section nor section 1416 of this Act shall preclude actions against officers or employees of the United States for injuries resulting from their acts outside the scope of their employment or not in the line of their duties, or from their acts committed with the intent to injure the person or property of another.

(e) The provisions of section 1346(b) of title 28, United States Code, and the provisions of chapter 171 of such title shall not apply to claims cognizable under this chapter.

Subchapter II—Vessel Damage

INJURIES IN LOCKS OF CANAL

Sec. 1411. The Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels, which may arise by reason of their passage through the locks of the Panama Canal under the control of officers or employees of the United States. Damages may not be paid where the injury was proximately caused by the negligence or fault of the vessel, master, crew, or passengers. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. Damages may not be allowed and paid for injuries to any protrusion beyond any portion of the hull of a vessel, whether it is permanent or temporary in character. A vessel is considered to be passing through the locks of the Canal, under the control of officers or employees of the United States, from the time the first towing line is made fast on board before entrance into the locks and until the towing lines are cast off upon, or immediately prior to, deparature from the lock chamber.

INJURIES OUTSIDE LOCKS

Sec. 1412. The Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels which may arise by reason of their presence in the Panama Canal, or waters adjacent thereto, other than the locks, when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal, and when the amount of the claim does not exceed $120,000. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. In the case of a vessel which is required by or pursuant to regulations prescribed pursuant to section 1801 of this Act to have a Panama Canal pilot on duty aboard, damages may not be adjusted and paid for injuries to the vessel, or its cargo, crew, or passengers, incurred while the vessel was underway and in motion, unless at the time the injuries were incurred the navigation or movement of the vessel was under the control of a Panama Canal pilot.

MEASURE OF DAMAGES GENERALLY

Sec. 1413. In determining the amount of the award of damages for injuries to a vessel for which the Commission is determined to be liable there may be included—

(1) the actual or estimated cost of repairs;

(2) charter hire actually lost by the owners, or charter hire actually paid, depending upon the terms of the charter party, for the time the vessel is undergoing repairs;

(3) maintenance of the vessel and wages of the crew, if they are found to be actual additional expenses or losses incurred outside of the charter hire; and

(4) other expenses which are definitely and accurately shown to have been incurred necessarily and by reason of the accident or injuries.

Agent's fees, or commissions, or other incidental expenses of similar character, or any items which are indefinite, indeterminable, speculative, or conjectural may not be allowed. The Commission shall be furnished such vouchers, receipts, or other evidence as may be necessary in support of any item of a claim. If a vessel is not operated under charter but by the owner directly, evidence shall be secured if available as to the sum for which vessels of the same size and class can be chartered in the market. If the charter value cannot be determined, the value of the vessel to its owners in the business in which it was engaged at the time of the injuries shall be used as a basis for estimating the damages for the vessel's detention; and the books of the owners showing the vessel's earnings about the time of the accident or injuries shall be considered as evidence of probable earnings during the time of detention. If the books are unavailable, such other evidence shall be furnished as may be necessary.

DELAYS FOR WHICH NO RESPONSIBILITY IS ASSUMED

Sec. 1414. The Commission is not responsible, and may not consider any claim, for demurrage or delays caused by—

(1) landslides or other natural causes;

(2) necessary construction or maintenance work of Canal locks, terminals, or equipment;

(3) obstruction arising from accidents;

(4) time necessary for admeasurement;

(5) congestion of traffic;

(6) time necessary for investigation of marine accidents; or

(7) except as specially set forth in this subchapter, any other cause.

SETTLEMENT OF CLAIMS

Sec. 1415. (a) Subject to subsection (b) of this section, the Commission, by mutual agreement, compromise, or otherwise, may adjust and determine the amounts of the respective awards of damages pursuant to this subchapter. Such amounts shall be payable promptly out of any moneys appropriated or allotted for the maintenance and operation of the Panama Canal. Acceptance by a claimant of the amount awarded to him shall be deemed to be in

full settlement of such claim against the Government of the United States.

(b) The Commission shall not adjust and pay any claim for damages for injuries arising by reason of the presence of the vessel in the Panama Canal or adjacent waters outside the locks where the amount of the claim exceeds $120,000 but shall submit the claim to the Congress in a special report containing the material facts and the recommendation of the Commission thereon.

ACTIONS ON CLAIMS

Sec. 1416. A claimant for damages pursuant to section 1411 of this Act who considers himself aggrieved by the findings, determination, or award of the Commission in reference to his claim may bring an action on the claim against the Commission in the United States District Court for the Eastern District of Louisiana. Subject to the provisions of this chapter and of applicable regulations issued pursuant to section 1801 of this Act relative to navigation of the Panama Canal and adjacent waters, such actions shall proceed and be heard by the court without a jury according to the principles of law and rules of practice obtaining generally in like cases between a private party and a department or agency of the United States. Any judgment obtained against the Commission in an action under this subchapter shall be paid out of any moneys appropriated or allotted for the maintenance and operation of the Panama Canal. An action for damages cognizable under this section shall not otherwise lie against the United States or the Commission, nor in any other court, than as provided in this section; nor may it lie against any officer or employee of the United States or of the Commission.

INVESTIGATION OF ACCIDENT OR INJURY GIVING RISE TO CLAIM

Sec. 1417. Notwithstanding any other provision of law, a claim may not be considered under this subchapter, or an action for damages lie thereon, unless, prior to the departure from the Panama Canal of the vessel involved—

(1) an investigation by the competent authorities of the accident or injury, giving rise to the claim has been completed; and

(2) the basis for the claim has been laid before the Commission.

BOARD OF LOCAL INSPECTORS

Sec. 1418. (a) The President shall provide for the establishment of a Board of Local Inspectors of the Panama Canal Commission which shall perform, in accordance with regulations prescribed by the President—

(1) the investigations required by section 1417 of this Act; and

(2) such other duties with respect to marine matters as may be assigned by the President.

(b) In conducting any investigation pursuant to subsection (a) of this section, the Board of Local Inspectors established pursuant to

such subsection may summon witnesses, administer oaths, and require the production of books and papers necessary for such investigation.

CHAPTER 5—PUBLIC PROPERTY

ASSETS AND LIABILITIES OF PANAMA CANAL COMPANY

Sec. 1501. All property and other assets of the Panama Canal Company shall revert to the United States on the effective date of this Act, and, except as otherwise provided by law, the United States shall assume the liabilities, including contractual obligations, of the Panama Canal Company then outstanding. The Commission may use such property, facilities, and records of the Panama Canal Company as are necessary to carry out its functions.

TRANSFERS AND CROSS-SERVICING BETWEEN AGENCIES

Sec. 1502. (a) In the interest of economy and maximum efficiency in the utilization of property and facilities of the United States, there are authorized to be transferred between departments and agencies of the United States, with or without reimbursement, such facilities, buildings, structures, improvement, stock, and equipment located in the Republic of Panama, and used for their activities therein, as may be mutually agreed upon by the departments and agencies involved and approved by the President of the United States or his designee.

(b) The Commission may enter into cross-serving agreements with any other departments or agency of the United States for the use of facilities, furnishing of services, or performance of functions.

(c) The Commission, any department or agency of the United States, or any United States court in the Republic of Panama is authorized to transfer to the Government of the Republic of Panama any record of such Commission, department, agency, or court, or copy thereof, including any record acquired from the Canal Zone Government or Panama Canal Company (including any vital statistics record), to any other department, agency, or court of the United States if such action is determined by the Commission, the head of the department or agency concerned, or the judge of the court concerned to be in the interest of the United States. Transfer of any record or copy thereof under this section to the Government of the Republic of Panama shall be made under the coordination of and with the approval of the United States Ambassador to the Republic of Panama.

(d) The provisions of this section shall apply to the Smithsonian Institution.

DISPOSITION OF PROPERTY OF THE UNITED STATES

Sec. 1503. No property of the United States located in the Republic of Panama may be disposed of except pursuant to law enacted by the Congress.

TRANSFER OF PROPERTY TO PANAMA

Sec. 1504. (a)(1) On the date on which the Panama Canal Treaty of 1977 enters into force, the Secretary of State may convey to the Republic of Panama the Panama Railroad and such property located in the area which, immediately before such date, comprised the Canal Zone and which is not within the land and water areas the use of which is made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(2) Property transferred pursuant to paragraph (1) of this subsection may not include buildings and other facilities, except housing, located outside such areas, the use of which is retained by the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b) With respect to the transfer of all other property (not described in subsection (a)(1) of this section) to be transferred in accordance with the terms of the Panama Canal Treaty of 1977 and related agreements, the Secretary of State may convey such property from time to time in accordance with the terms of such Treaty and related agreements. At least 180 days before the transfer of any such property, the President must submit a written report to the Congress—

(1) precisely identifying and describing the particular property to be transferred;

(2) certifying the state of compliance by the Republic of Panama with such Treaty and related agreements; and

(3) setting forth the reasons for the conveyance being made at the particular time.

(c) The Panama Canal, and such other property referred to in paragraph 2(d) of Article XIII of the Panama Canal Treaty of 1977 that has not been previously transferred in accordance with paragraphs 2(a), 2(b), and 2(c) of such Article, shall not be transferred to the Republic of Panama prior to December 31, 1999.

CHAPTER 6—TOLLS FOR USE OF THE PANAMA CANAL

PRESCRIPTION OF MEASUREMENT RULES AND RATES OF TOLLS

Sec. 1601. (a) The President is authorized, subject to the provisions of this chapter, to prescribe and from time to time change—

(1) the rules for the measurement of vessels for the Panama Canal; and

(2) the tolls that shall be levied for the use of the Canal.

(b) Such rules of measurement and tolls prevailing on the effective date of this Act shall continue in effect until changed as provided in this chapter.

BASES OF TOLLS

Sec. 1602. (a) Tolls on merchant vessels, army and navy transports, colliers, tankers, hospital ships, supply ships, and yachts shall be based on net vessel tons of one hundred cubic feet each of actual earning capacity determined in accordance with the rules for the measurement of vessels for the Panama Canal, and tolls on other floating craft shall be based on displacement tonnage. The

tolls on vessels in ballast without passengers or cargo may be less than the tolls for vessels with passenger or cargo.

(b) Tolls shall be prescribed at rates calculated to produce revenues to cover as nearly as practicable all costs of maintaining and operating the Panama Canal, together with the facilities and appurtenances related thereto, including unrecovered costs incurred on or after the effective date of this Act, interest, depreciation, payments to the Republic of Panama pursuant to paragraph 5 of Article III and paragraph 4 (a) and (b) of Article XIII of the Panama Canal Treaty of 1977, and capital for plant replacement, expansion, and improvements. Tolls shall not be prescribed at rates calculated to produce revenues sufficient to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977.

(c) Vessels operated by the United States, including vessels of war and auxiliary vessels, and ocean-going training ships owned by the United States and operated by State nautical schools, shall pay tolls.

(d) The levy of tolls is subject to the provisions of section 1 of Article III of the treaty between the United States of America and Great Britain signed November 18, 1901, of Article I of the treaty between the United States of America and the Republic of Colombia signed April 6, 1914, and of Articles II, III, and VI of the Treaty Concerning Permanent Neutrality and Operation of the Panama Canal, between the United States of America and the Republic of Panama, signed September 7, 1977.

CALCULATION OF INTEREST

Sec. 1603. For purposes of sections 1311 and 1602 of this Act, interest shall be computed, at a rate determined by the Secretary of the Treasury, on the investment of the United States in the Panama Canal as shown in the accounts of the Panama Canal Company at the close of business on the day preceding the effective date of this Act, and as adjusted in accordance with subsections (b) and (c) of this section. Capital investment for interest purposes shall not include any interest during construction.

(b) The investment of the United States described in subsection (a) of this section—

(1) shall be increased by—

(A) the amount of expenditures from appropriations to the Commission made on or after the effective date of this Act, and

(B) the value of property transferred to the Commission by any other department or agency of the United States, as determined in accordance with subsection (c) of this section; and

(2) shall be decreased by—

(A) the amount of the funds covered into the Treasury pursuant to section 1302 of this Act,

(B) the value of property transferred to the Republic of Panama pursuant to this or any other Act on or after the date on which the Panama Canal Treaty of 1977 enters into force, and

(C) the value of property transferred by the Commission to any other department or agency of the United States.

(c) The value of property transferred to the Commission by any other department or agency of the United States shall be determined by the Director of the Office of Management and Budget. In computing such value, such Director shall give due consideration to the cost and probable earning power of the transferred property, or the usable value to the Commission if clearly less than cost, and shall make adequate provisions for depreciation, obsolescence, and other determinable decreases in value. Insofar as practicable, the value of such transferred property shall exclude any portion of such value properly allocable to national defense.

PROCEDURES

Sec. 1604. (a) The Commission shall publish in the Federal Register notice of any proposed change in the rules of measurement or rates of tolls referred to in section 1601(a) of this Act. The Commission shall give interested parties an opportunity to participate in the proceedings through submission of written data, views, or arguments, and participation in a public hearing to be held not less than 30 days after the date of publication of the notice. The notice shall include the substance of the proposed change and a statement of the time, place, and nature of the proceedings. At the time of publication of such notice, the Commission shall make available to the public an analysis showing the basis and justification for the proposed change, which, in the case of a change in rates of tolls, shall indicate the conformity of the existing and proposed rates of tolls with the requirements of section 1602 of this Act, and the Commission's adherence to the requirement for full consideration of the following factors set forth in Understanding (1) incorporated in the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (adopted by the United States Senate on March 16, 1978):

(1) the costs of operating and maintaining the Panama Canal;

(2) the competitive position of the use of the Canal in relation to other means of transportation;

(3) the interests of the United States and the Republic of Panama in maintaining their domestic fleets;

(4) the impact of such a change in rates of tolls on the various geographical areas of each of the two countries; and

(5) the interests of both countries in maximizing their international commerce.

(b) After consideration of the relevant matter presented, the Commission may revise the proposed rules of measurement or rates of tolls, as the case may be, except that, in the case of rates of tolls, if such revision proposes rates greater than those originally proposed, a new analysis of the proposed rates shall be made available to the public, and a new notice of the revised proposal shall be published in the Federal Register apprising interested persons of the opportunity to participate further in the proceedings through submission of written data, views, or arguments, and participation in a public hearing to be held not less than 30 days after the date of

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publication of the new notice. The procedure set forth in this subsection shall be followed for any subsequent revision of the proposed rates of tolls by the Commission which proposes rates higher than those in the preceding proposal.

(c) After the proceedings have been conducted pursuant to subsections (a) and (b) of this section, the Commission shall publish in the Federal Register a notice of the changes in the rules of measurement or rates of tolls, as the case may be, to be recommended to the President.

(d) Upon publication of the notice pursuant to subsection (c) of this section, the Commission shall forward a complete record of the proceedings, with the recommendation of the Commission, to the President for his consideration. The President may approve, disapprove, or modify any or all of the changes in the rules of measurement or rates of tolls recommended by the Commission.

(e) Rules of measurement or rates of tolls prescribed by the President pursuant to this chapter shall take effect on a date prescribed by the President which is not less than 30 days after the President publishes such rules or rates in the Federal Register.

(f) Action to change the rules of measurement for the Panama Canal or the rates of tolls for the use of the Canal pursuant to this chapter shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code.

INTERIM TOLL ADJUSTMENT

Sec. 1605. (a) After the effective date of this section, the Panama Canal Company or the Commission may, without regard to the procedures set forth in section 1604 of this Act for making changes in tolls by the Commission and the President, change the rates of tolls calculated to cover the cost of maintaining and operating the Panama Canal during the fiscal year beginning on October 1, 1979. Such rates shall be calculated in accordance with the provisions of section 1602(b) of this Act. Any such change in rates of tolls shall be subject to the approval of the President whose action in the matter shall be final. Any change in rates of tolls approved by the President shall become effective on a date prescribed by the President.

(b) This section shall take effect on the date of the enactment of this Act.[4]

CHAPTER 7—GENERAL REGULATIONS

AUTHORITY OF PRESIDENT

Sec. 1701. The President may prescribe, and from time to time amend, regulations applicable within the areas and installations made available to the United States for the operation and protection of the Panama Canal pursuant to the Panama Canal Treaty of 1977 and related agreements concerning—

(1) the use of aircraft;

(2) the possession and use of alcoholic beverages;

(3) exclusion and removal of persons; and

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[4] Sept. 27, 1979.

(4) health and sanitation.

AUTHORITY OF COMMISSION

Sec. 1702. The Commission may prescribe, and from time to time amend, regulations applicable within the areas and installations made available to the United States for the operation and protection of the Panama Canal pursuant to the Panama Canal Treaty of 1977 and related agreements concerning—

(1) the keeping and impounding of domestic animals;
(2) fire prevention;
(3) the sale or use of fireworks;
(4) the use of roads and highways;
(5) photographing of areas, objects, installations, or structures;
(6) swimming in the Panama Canal and adjacent waters; and
(7) the protection of wildlife, hunting, and fishing.

CHAPTER 8—SHIPPING AND NAVIGATION

Subchapter I—Operation of Canal

OPERATING REGULATIONS

Sec. 1801. The President may prescribe, and from time to time amend, regulations governing—

(1) the operation of the Panama Canal;
(2) the navigation of the harbors and other waters of the Panama Canal and areas adjacent thereto, including the ports of Balboa and Cristobal;
(3) the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto;
(4) pilotage in the Panama Canal or the approaches thereto through the adjacent waters; and
(5) the licensing of officers or other operators of vessels navigating the waters of the Panama Canal and areas adjacent thereto, including the ports of Balboa and Cristobal.

Subchapter II—Inspection of Vessels

VESSELS SUBJECT TO INSPECTION

Sec. 1811. With the exception of private vessels merely transiting the Panama Canal, and of public vessels of all nations, vessels navigating the waters of the Panama Canal shall be subject to an annual inspection of hulls, boilers, machinery, equipment, and passenger accommodations.

FOREIGN VESSELS

Sec. 1812. With respect to a foreign vessel of a country which has inspection laws approximating those of the United States, any such vessel having an unexpired certificate of inspection duly issued by the authorities of such country shall not be subject to an inspection other than that necessary to determine whether the vessel, its boilers, and its lifesaving equipment are as stated in the certificate of

inspection. A certificate of inspection may not be accepted as evidence of lawful inspection under this section unless similar privileges are granted to vessels of the United States under the laws of the country to which the vessel belongs.

REGULATIONS GOVERNING INSPECTION

Sec. 1813. The Commission shall prescribe, and from time to time may amend, regulations concerning the inspection of vessels conforming as nearly as practicable to the laws and regulations governing marine inspection by the United States Coast Guard.

TITLE II—TREATY TRANSITION PERIOD

CHAPTER 1—LAWS CONTINUED IN FORCE

LAWS, REGULATIONS, AND ADMINISTRATIVE AUTHORITY

Sec. 2101. To the extent not inconsistent with the Panama Canal Treaty of 1977 and related agreements and the provisions of this Act, the Canal Zone Code and other laws, regulations, and administrative authority of the United States applicable in the Canal Zone immediately before the date on which the Panama Canal Treaty of 1977 enters into force shall continue in force for the purpose of the exercise by the United States of law enforcement and judicial jurisdiction during the transition period provided for in Article XI of the Panama Canal Treaty of 1977 (hereinafter in this Act referred to as the "transition period").

CHAPTER 2—COURTS

JURISDICTION

Sec. 2201. (a) During the transition period, the jurisdiction of the United States District Court for the District of the Canal Zone and the magistrates' courts under title 3 of the Canal Zone shall be continued, subject to the limitations set forth in Article XI of the Panama Canal Treaty of 1977.

(b) For purposes of the exercise of the jurisdiction provided in Article XI of the Panama Canal Treaty of 1977, the United States District Court and magistrates' courts referred to in subsection (a) of this section shall construe the terms "United States citizen employees" "members of the United States Forces", "civilian component", and "dependents" as such terms are defined in the Panama Canal Treaty of 1977 and related agreements, and shall construe the terms "areas and installations made available for the use of the United States" to mean (1) The Panama Canal operating areas and housing areas described in Annex A to the Agreement in Implementation of Article III of the Panama Canal Treaty, (2) the Ports of Balboa and Cristobal described in Annex B to that Agreement, and (3) the defense sites and Military Areas of Coordination described in Annex A to the Agreement in Implementation of Article IV of the Panama Canal Treaty.

DIVISION AND TERMS OF DISTRICT COURT

Sec. 2202. The United States District Court for the District of the Canal Zone may conduct its affairs at such places within the areas made available for the use of the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, and at such times, as the district judge may designate by rule or order.

TERMS OF CERTAIN OFFICES

Sec. 2203. (a) Notwithstanding the provisions of sections 5, 41, 45, and 82 of title 3 of the Canal Zone Code, the term of office of a district judge, magistrate, United States attorney, or United States marshal shall extend for a period of 30 months beginning on the date on which the Panama Canal Treaty of 1977 enters into force, and any such term shall be subject to such extension of time as may be provided for the disposition of pending cases by agreement between the United States and the Republic of Panama, pursuant to the last sentence of paragraph 7 of Article XI of the Panama Canal Treaty of 1977.

(b) The provisions of this section shall take effect on the date of the enactment of this Act.

RESIDENCE REQUIREMENTS

Sec. 2204. Section 5(d), 7(d), 41(d), and 45(d) of title 3 of the Canal Zone Code, the second sentence of section 42 of such title, and the second sentence of section 82(c) of such title, which provisions require that certain court officials reside in the Canal Zone, are repealed.

SPECIAL DISTRICT JUDGE

Sec. 2205. (a) Section 6 of title 3 of the Canal Zone Code is amended to read as follows:

"§ 6. Special district judge

"The chief judge of the judicial circuit of the United States in which the district court lies may designate and assign a special district judge to act when necessary—

"(1) during the absence of the district judge;

"(2) during the disability or disqualification of the district judge because of sickness or otherwise to discharge his duties; or

"(3) when there is a vacancy in the office of district judge.".

(b) Each designation and assignment by the chief judge under section 6 of title 3 of the Canal Zone Code, as amended by subsection (a) of this section, shall be made in accordance with chapter 13 of title 28, United States Code, which shall be deemed to apply for such purposes.

MAGISTRATES' COURTS

Sec. 2206. (a) The two magistrates' courts established pursuant to section 81 of title 3 of the Canal Zone Code and existing immediately before the date on which the Panama Canal Treaty of 1977

enters into force shall continue in operation during the transition period unless terminated during such period under subsection (b) of this section.

(b) During the transition period, the President may terminate one magistrate's court, together with the positions of magistrate and constable corresponding thereto, if the President determines that the workload is insufficient to warrant continuance of that court. If one of the magistrates' courts is so terminated, the remaining magistrate's court shall exercise the jurisdiction that otherwise would have been exercised by the terminated court and shall take custody of and administer all records of the terminated court.

CHAPTER 3—ATTORNEYS

OATH OF ATTORNEYS

Sec. 2301. (a) Section 543 of title 3 of the Canal Zone Code is amended to read as follows:

"§ 543. Oath of attorneys admitted to bar.

"Before receiving a certificate the applicant shall take and subscribe in court an appropriate oath prescribed by the district judge.".

(b) The table of sections for chapter 17 of title 3 of the Canal Zone Code is amended by amending the item relating to section 543 to read as follows:

"543. Oath of attorneys admitted to bar.".

CHAPTER 4—TRANSITION AUTHORITY

TRANSITION AUTHORITY OF PRESIDENT

Sec. 2401. Except as expressly provided to the contrary in this or any other Act, or in the Panama Canal Treaty of 1977 and related agreements, any authority necessary for the exercise during the transition period of the rights and responsibilities of the United States specified in Article XI of the Panama Canal Treaty of 1977 shall be vested in the President.

PRISONS; PAROLE; PARDONS

Sec. 2402. (a) Subsection (c) of section 6503 of title 6 of the Canal Zone Code is amended to read as follows:

"(c) Pursuant to the provisions of section 5003 of title 18, United States Code, the Governor may contract with the Attorney General of the United States for the transfer to the custody of the Attorney General of prisoners sentenced by the United States District Court for the District of the Canal Zone to terms of imprisonment in excess of one year.".

(b) After entry into force of the Panama Canal Treaty of 1977—

(1) all prisoners imprisoned in United States prisons pursuant to contracts entered into pursuant to subsection (c) of section 6503 of title 6 of the Canal Zone Code, as amended by subsection (a) of this section, shall be committed to the custody of

the Attorney General as if committed in accordance with part III of title 18, United States Code;

(2) all persons convicted of offenses in the United States District Court for the District of the Canal Zone, and sentenced to terms of imprisonment of one year or less, shall be committed to the custody of the Commission; and

(3) the Commission shall prescribe, and from time to time may amend, regulations providing for the management of prisoners in the jails located in the areas and installations made available for the use of the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, including provisions for treatment, care, assignment for work, discipline, and welfare.

(c) After the entry into force of the Panama Canal Treaty of 1977, all persons convicted of offenses in the United States District Court for the District of the Canal Zone, and sentenced to terms of imprisonment in excess of one year, shall be committed to the custody of the Attorney General pursuant to parts III and IV of title 18, United States Code.

(d)(1) Sections 6501 through 6505 of title 6 of the Canal Zone Code are repealed.

(2) The table of sections for chapter 351 of title 6 of the Canal Zone Code is amended by repealing the items relating to sections 6501 through 6505.

(3) Subsections (c) and (d) of this section shall take effect 90 days after entry into force of the prisoner transfer agreement referred to in paragraph 11 of Article IX of the Panama Canal Treaty of 1977 but in no event later than 90 days prior to the end of the transition period.

(f)(1) Chapter 355 of title 6 of the Canal Zone Code is repealed.

(2) The table of chapters for part 3 of title 6 of the Canal Zone Code is amended by repealing the item relating to chapter 355.

TITLE III—GENERAL PROVISIONS

CHAPTER 1—CEMETERIES

DISINTERMENT, TRANSPORTATION, AND REINTERMENT OF REMAINS

Sec. 3101. (a) There are authorized to be appropriated for the fiscal year beginning October 1, 1979, and subsequent fiscal years, such sums as may be necessary to carry out the purposes and provisions of Reservation (3) to the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, adopted by the United States Senate March 16, 1978, such sums to be made available to carry out such purposes and provisions.

(b) With regard to remains that are to be reinterred in the United States, the United States shall not bear the cost of funeral home services, vaults, plots, or crypts unless otherwise provided for by law.

CHAPTER 2—IMMIGRATION

SPECIAL IMMIGRANTS

Sec. 3201. (a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), relating to the definition of special immigrants, is amended—

(1) by striking out "or" at the end of subparagraph (C);

(2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a semicolon; and

(3) by adding after subparagraph (D) the following new subparagraphs:

"(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3(a)(1) of the Panama Canal Act of 1979) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

"(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment; or

"(G) an immigrant, and his accompanying spouse and children who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment.".

(b) Section 212(d) of such Act (8 U.S.C. 1182(d)), relating to waivers of conditions of inadmissibility to the United States, is amended by adding after paragraph (8) the following new paragraphs:

"(9) The provisions of paragraph (7) of subsection (a) shall not be applicable to any alien who is seeking to enter the United States as a special immigrant under subparagraph (E), (F), or (G) of section 101(a)(27).

"(10) The provisions of paragraph (15) of subsection (a) shall not be applicable to any alien who is seeking to enter the United States as a special immigrant under subparagraph (E), (F), or (G) of section 101(a)(27) and who applies for admission as such a special immigrant not later than March 31, 1982.".

(c) Notwithstanding any other provision of law, not more than 15,000 individuals may be admitted to the United States as special

immigrants under subparagraphs (E), (F), or (G) of section 101(a)(27) of the Immigration and Nationality Act, as added by subsection (a) of this section, of which not more than 5,000 may be admitted in any fiscal year.

(d)(1) The amendments made by this section shall take effect on the date of the enactment of this Act.[5]

(2) Paragraph (9) of section 212(d) of the Immigration and Nationality Act, as added by subsection (d) of this section, shall cease to be effective at the end of the transition period.

CHAPTER 3—REPORTS; AMENDMENTS; REPEALS AND REDESIGNATION; EFFECTIVE DATE

REPORT

Sec. 3301. Until the termination of the Panama Canal Treaty of 1977, the President shall report annually on the status of the exercise of the rights and responsibilities of the United States under that Treaty. Such report shall include a discussion of the following:

(1) The actions taken by the Government of the Republic of Panama with respect to the living conditions of persons who resided in the Canal Zone before the effective date of this Act and who continue to reside in those areas made available to the United States under the Agreement in Implementation of Article III of the Panama Canal Treaty.

(2) The terms, conditions, and charges for land-use licenses within the canal operating areas specified in the Agreement in Implementation of Article III of the Panama Canal Treaty.

(3) The condition of former employees (and their dependents) of the Panama Canal Company and the Canal Zone Government who reside in the Republic of Panama on or after the effective date of this Act.

AMENDMENTS

Sec. 3302. (a) Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. 191), is amended—

(1) by striking out the second paragraph; and

(2) in subsection (b) of the last paragraph, by striking out ", the Canal Zone,".

(b) Section 1 of title XIII of the Act of June 15, 1917 (50 U.S.C. 195), is amended by striking out "the Canal Zone and".

(c) The first section of the Act of August 9, 1954 (50 U.S.C. 196), is amended by striking out ", including the Canal Zone,".

(d) The Department of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1974 (87 Stat. 636 *et seq.*) is amended by striking out the heading "PAYMENT TO THE REPUBLIC OF PANAMA" and all that follows that relates to the heading.

(e) Title 5, United States Code, is amended—

(1) in sections 305(a)(7), 5102(a)(1)(vii), 5342(a)(1)(G), 5348(b), and 5541(2)(xii), by striking out "Panama Canal Company" and inserting in lieu thereof "Panama Canal Commission";

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[5] Sept. 27, 1979.

(2) in sections 5504(a)(A) and 6301(2)(iv), by striking out "Canal Zone Government or the Panama Canal Company" and inserting in lieu thereof "Panama Canal Commission";

(3) in section 8335(e), by striking out "Panama Canal Company or the Canal Zone Government" and inserting in lieu thereof "Panama Canal Commission";

(4) in section 5373(1), by striking out "section 121 of title 2, Canal Zone Code (76A Stat. 15)" and inserting in lieu thereof "section 1202 of the Panama Canal Act of 1979";

(5) in section 6323(c)(2)(B), by striking out "the Canal Zone,";

(6) in section 5102(c), by amending paragraph (12) to read as follows:

"(12) any Executive agency to the extent of any election under section 1212(b)(2) (relating to the Panama Canal Employment System) of the Panama Canal Act of 1979;";

(7) in section 5583(b), by—

(A) adding "and" at the end of paragraph (1);

(B) striking out paragraph (2); and

(C) redesignating paragraph (3) as paragraph (2);

(8) in section 5533(d)(7), by—

(A) striking out the semicolon at the end of subparagraph (E) and inserting in lieu thereof "; or";

(B) striking out "; or" at the end of subparagraph (F) and inserting in lieu thereof a period; and

(C) striking out subparagraph (G);

(9) in section 8146—

(A) by striking out "Canal Zone" in the catchline and inserting in lieu thereof "Panama Canal Commission";

(B) in subsection (a)(1), by striking out "Canal Zone Government and of the Panama Canal Company are concerned to the Governor of the Canal Zone" and inserting in lieu thereof "Panama Canal Commission are concerned to the Commission";

(C) in the first sentence of subsection (b), by striking out "Canal Zone Government" and inserting "Panama Canal Commission" in lieu thereof;

(D) in the first sentence of subsection (b), by striking out "or from funds of the Panama Canal Company";

(E) in the second sentence of subsection (b), by striking out "Governor of the Canal Zone" and inserting "Panama Canal Commission" in lieu thereof and by striking out "Canal Zone Government" and inserting "Panama Canal Commission" in lieu thereof;

(F) by amending subsection (c) to read as follows:

"(c) The President may authorize the Panama Canal Commission to waive, at its discretion, the making of the claim required by section 8121 of this title in the case of compensation to an employee of the Panama Canal Commission for temporary disability, either total or partial."; and

(G) in subsection (e), by striking out "Canal Zone Government and of the Panama Canal Company" and inserting in lieu thereof "Panama Canal Commission";

(10) in section 5343(a)(5), by striking out "Canal Zone" and inserting in lieu thereof "areas and installations in the Repub-

lic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979).";

(11) in section 5316(87), by striking out "Governor of the Canal Zone" and inserting in lieu thereof "Administrator of the Panama Canal Commission"; and

(12) in the table of sections for chapter 81, by striking out "Canal Zone" in the item relating to section 8146 and inserting in lieu thereof "Panama Canal Commission".

REPEALS AND REDESIGNATION

Sec. 3303. (a) The following provisions of law are repealed:

(1) title 2 of the Canal Zone Code;

(2) sections 2 and 3 of title 3 of the Canal Zone Code, and the items relating to such sections in the table of sections for chapter 1 of title 3 of the Canal Zone Code;

(3) subchapter III of chapter 237 of title 6 of the Canal Zone Code and the items relating to such subchapter in the table of sections for chapter 237 of such title;

(4) subsection (d) of section 38 of the Arms Export Control Act (22 U.S.C. 2778(d)); and

(5) section 4 of the Act of November 15, 1941 (50 U.S.C. 191b).

(b) Those provisions of the Canal Zone Code not repealed by this Act are redesignated as the "Panama Canal Code". Any reference to the Canal Zone Code in those laws and regulations referred to in section 3(b) of this Act shall, subject to the provisions of such action, be deemed to refer to the Panama Canal Code.

EFFECTIVE DATE

Sec. 3304. Except as provided in sections 1231, 1232, 1241, 1242, 1261, 1605, 2203, 2402, 3101, and 3201 of this Act, the preceding provisions of this Act shall take effect on the date on which the Panama Canal Treaty of 1977 enters into force.[6]

Approved September 27, 1979.

[6] Oct. 1, 1979.

b. Executive Order 12215, May 27, 1980, 45 F.R. 36043

DELEGATION OF PANAMA CANAL FUNCTIONS

By the authority vested in me as President of the United States of America by the Panama Canal Code (76A Stat. 1), as amended, by the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-1. The Secretary of Defense.

1-101. The Secretary of Defense shall develop for the President's consideration an appropriate legislative proposal as required by Section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)). The Secretary of Defense shall coordinate development of this proposal with the Secretary of State and the heads of other interested Executive agencies.

1-102. The function vested in the President by Section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)) to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II, Chapter 2 of Title I of the Panama Canal Act of 1979, is delegated to the Secretary of Defense.

1-103. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-104. The function vested in the President by Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, is delegated to the Secretary of Defense.

1-105. The functions vested in the President by Sections 1243(c)(1) and 2401 of the Panama Canal Act of 1979 (93 Stat. 474 and 495; 22 U.S.C. 3681(c)(1) and 3851) are delegated to the Secretary of Defense.

1-106. The functions vested in the President by Section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3782(a)) are delegated to the Secretary of Defense.

1-2. Coordination of Pay and Employment Practices.

1-201. In order to coordinate the policies and activities of agencies under subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651 *et seq.*), each agency shall periodically consult with the Secretary of Defense with re-

spect to the establishment of rates of pay, in order to develop compatible or unified systems for basic pay. In addition, each agency shall consult with the Secretary of Defense on such other matters as the Secretary may deem appropriate in order to develop compatible or unified employment practices.

1-202. The head of each agency shall, upon approval by the Secretary of Defense, adopt a schedule of basic pay pursuant to Section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and adopt regulations governing other matters relating to pay and employment practices.

1-203. The authority vested in the President by Section 1223(a) of the Panama Canal Act of 1979 to coordinate the policies and activities of agencies (93 Stat. 467; 22 U.S.C. 3663(a)) is delegated to the Secretary of Defense. The Secretary shall exercise such functions in a manner which is in accord with the provisions of Sections 1-201 and 1-202 of this Order.

1-3. Panama Canal Commission.

1-301. The functions vested in the President and delegated to the Secretary of Defense in this Section 1-3 of this Order shall be carried out by the Secretary of Defense, who shall, in carrying out the said functions, provide, by redelegation or otherwise, for their performance, in a manner consistent with paragraph 3 of Article III of the Panama Canal Treaty of 1977, by the Panama Canal Commission.

1-302. The authority of the President under Section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 3614) to fix the compensation of and to define the authorities and duties of the Deputy Administrator and the Chief Engineer is delegated to the Secretary of Defense.

1-303. The functions vested in the President by Sections 1418, 1801, and 2206 of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 494; 22 U.S.C. 3778, 3811, and 3844) are delegated to the Secretary of Defense.

1-304. The authority of the President under Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801) with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-305. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations in the Republic of Panama made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-306. The function vested in the President by Sections 82 and 86 of Title 3 of the Panama Canal Code (76A Stat. 54 and 55; 3 P.C.C. 82 and 86), as amended, are delegated to the Secretary of Defense.

1-307. The functions vested in the President by subsections (a), (b) and (c) of Section 8146 of Title 5 of the United States Code, as they apply to the employees of the Panama Canal Commission, are delegated to the Secretary of Defense.

1-308. Except to the extent heretofore delegated, the functions vested in the President pursuant to subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463) are hereby delegated to the Secretary of Defense.

1-4. Other Agencies.

1-401. The functions vested in the President by Sections 1111 and 3301 of the Panama Canal Act of 1979 (93 Stat. 459 and 497; 22 U.S.C. 3621 and 3871), are delegated to the Secretary of State. The Secretary shall perform these functions in coordination with the Secretary of Defense.

1-402. The functions vested in the President by Sections 1112(d), 1344(b), and 1504(b) of the Panama Canal Act of 1979 (93 Stat. 460, 484, and 488; 22 U.S.C. 3622(d), 3754(b), and 3784(b)) are delegated to the Secretary of State.

1-403. The functions vested in the President by Section 1243(a)(1) of the Panama Canal Act of 1979 (93 Stat. 473; 22 U.S.C. 3681(a)(1)) are delegated to the Director of the Office of Personnel Management.

1-404. Paragraphs (22) and (23) of Section 1 of Executive Order No. 11609, as amended, and Executive Order No. 11713 are revoked.

L. LAW OF THE SEA AND SELECTED MARITIME LEGISLATION

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NOTE.—Conventions and agreements referred to by Acts in this section may be researched according to the conventional citations to such materials or by consulting the compilation *Treaties and Other International Agreements on Fisheries, Oceanographic Resources, and Wildlife Involving the United States.* U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Prepared by the Congressional Research Service, Library of Congress. Washington, U.S. Govt. Printing Off., 1977 (95th Congress, 1st Session. Committee Print, October 1977).

1. Law of the Sea

a. Magnuson Fishery Conservation and Management Act of 1976, as amended

Partial Text of Public Law 94-265 [H.R. 200], 90 Stat. 331, approved April 13, 1976, as amended by Public Law 95-6 [H.J. Res. 240], 91 Stat. 14, approved February 1, 1977; Public Law 95-354 [H.R. 10732], 92 Stat. 519, approved August 28, 1978; Public Law 96-61 [S. 917], 93 Stat. 407, approved August 15, 1979; Public Law 96-118 [H.R. 2035], 93 Stat. 859, approved November 16, 1979; Public Law 96-470 [H.R. 6686], 94 Stat. 2237, approved October 19, 1980; Public Law 96-561 [S. 2163], 96 Stat. 3275 at 3296, approved December 22, 1980; and by Public Law 97-453 [H.R. 5002], 96 Stat. 2481, approved January 12, 1983

AN ACT To provide for the conservation and management of the fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Magnuson Fishery Conservation and Management Act of 1976".[1]

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Sec. 203. Congressional oversight of governing international fishery agreements.
Sec. 204. Permits for foreign fishing.
Sec. 205. Import prohibitions.
Sec. 206. Transitional provisions.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect of law of the sea treaty.
Sec. 402. Repeals.
Sec. 403. Fishermen's Protective Act amendments.
Sec. 404. Marine Mammal Protection Act amendment.
Sec. 405. Atlantic Tunas Convention Act amendment.
Sec. 406. Authorization of appropriations.

[1] Sec. 238 of Public Law 96-561 changed the name of this Act from the "Fishery Conservation and Management Act of 1976." Such amendment became effective on Jan. 6, 1981. Sec. 238 further stipulated that all references to the Fishery Conservation and Management Act of 1976 shall be redesignated as references to the Magnuson Fishery Conservation and Management Act of 1976.

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SEC. 2.[2] FINDINGS, PURPOSES AND POLICY.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishing industry,[3] including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

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[2] 16 U.S.C. 1801.

[3] The words "United States fishing industry" were substituted in lieu of the words "United States fishermen" by sec. 2(a) of Public Law 95-354 (92 Stat. 519).

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development by the United States fishing industry [4] of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development.[5]

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

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[4] The words "by the United States fishing industry" were added by sec. 2(b) of Public Law 95-354 (92 Stat. 519).

[5] The phrase ", and to that end, to ensure that optimum yield determinations promote such development" were added by sec. 233 of Public Law 96-561.

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

SEC. 3.[6] DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLENTERATA

Bamboo Coral—Acanella spp.;
Black Coral—Antipathes spp.;
Gold Coral—Callogorgia spp.;
Precious Red Coral—Corallium spp.;
Bamboo Coral—Keratoisis spp.; and
Gold Coral—Parazoanthus spp.

CRUSTACEA

Tanner Crab—Chionoecetes tanneri;
Tanner Crab—Chionoecetes opilio;
Tanner Crab—Chionoecetes angulatus;
Tanner Crab—Chionoecetes bairdi;
King Crab—Paralithodes camtschatica;
King Crab—Paralithodes platypus;
King Crab—Paralithodes brevipes;

[6] 16 U.S.C. 1802.

Lobster—Homarus americanus;
Dungeness Crab—Cancer magister;
California King Crab—Paralithodes californiensis;
California King Crab—Paralithodes rathbuni;
Golden King Crab—Lithodes aequispinus;
Northern Stone Crab—Lithodes maja;
Stone Crab—Menippe mercenaria; and
Deep-sea Red Crab—Geryon quinquedens.

MOLLUSKS

Red Abalone—Haliotis rufescens;
Pink Abalone—Haliotis corrugata;
Japanese Abalone—Haliotis kamtschatkana;
Queen Conch—Strombus gigas;
Surf Clam—Spisula solidissima; and
Ocean Quahog—Artica islandica.

SPONGES

Glove Sponge—Hippiospongia canaliculata;
Sheepswool Sponge—Hippiospongia lachne;
Grass Sponge—Spongia graminea; and
Yellow Sponge—Spongia barbera.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

(A) The catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25)[7] The term "United States fish processsors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(26)[7] The term "United States harvest fish" means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

(27)[7] The term "vessel of the United States" means—

(A) any vessel documented under the laws of the United States;

(B) any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and measuring less than 5 net tons; or

(C) any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and used exclusively for pleasure.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 101.[8] FISHERY CONSERVATION ZONE.

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

SEC. 102.[9] EXCLUSIVE FISHERY MANAGEMENT AUTHORITY.

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign

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[7] Sec. 3 of Public Law 95-354 (92 Stat. 519) redesignated par. (25) as (27) and added new pars. (25) and (26). Subsequently, sec. 15(a) of Public Law 97-453 (96 Stat. 2492) amended and restated par. (27). It formerly read as follows: "(27) The term 'vessel of the United States' means any vessel documented under the laws of the United States or registered under the laws of any State."

[8] 16 U.S.C. 1811.

[9] 16 U.S.C. 1812.

nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

SEC. 103.[10] HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104.[11] EFFECTIVE DATE.

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHING AGREEMENTS

SEC. 201.[12] FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing—

(1) is authorized under subsection (b) or (c);

(2) is not prohibited by subsection (g); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202 (b) or (c)), if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

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[10] 16 U.S.C. 1813.
[11] 16 U.S.C. 1811 note.
[12] 16 U.S.C. 1821.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D)[13] duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which[14] exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

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[13] Sec. 2(a)(1) of Public Law 97-453 (96 Stat. 2481), amended and restated subpar. (D), effective January 1, 1984. Upon such date, subpar. (D) will read as follows:

"(D) United States observers required under subsection (i) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;"

[14] The words "harvest an amount of fish which" were added by sec. 4(2) of Public Law 95-354 (92 Stat. 519).

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and

(D)[15] take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d)[16] TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) As used in this subsection—

(A) The term "base harvest" means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

(B) The term "harvesting season" means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

(C) The term "calculation factor" means, with respect to each United States fishery, 15 percent of the base harvest.

(D) The term "reduction factor amount" means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the calculation factor;

(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the calculation factor.

For purposes of this paragraph, the term "designated preceding harvest season" means—

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[15] Subpar. (D) was added by sec. 2(a)(2) of Public Law 97–453 (96 Stat. 2481).

[16] Subsec. (d) was amended and restated by sec. 230 of Public Law 96–561. It formerly read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act."

(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

(E) The term "annual fishing level" for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

(i) an amount equal to the reduction factor amount for that harvesting season; and

(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

(F) The term "United States fishery" means any fishery subject to the exclusive fishery management authority of the United States.

(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels), or

(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), shall allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

then such portion or part may be allocated [17] for use by foreign fishing vessels in such succeeding harvesting season. The determi-

[17] Sec. 2(a)(3) of Public Law 97-453 (96 Stat. 2481) substituted the phrase "may be allocated" in lieu of the phrase "shall be allocated".

nations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.

(e) ALLOCATION OF ALLOWABLE LEVEL.—(1) [18] (A) The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of United States fish or fishery products;

(ii) whether, and to what extent, such nation is cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

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[18] Sec. 2(a)(4) of Public Law 97-453 (96 Stat. 2481) amended and restated par. (1). Previously, sec. 3 of Public Law 96-61 (93 Stat. 407) amended subsec. (e) by designating the existing text as par. (1) and adding a new par. (2). In addition, sec. 231 of Public Law 96-561 (94 Stat. 3297) amended and restated the last sentence of par. (1), effective for the 1981 harvesting season and harvesting seasons thereafter.

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the fishery conservation zone for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)[19] (A) For the purposes of this paragraph—

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978(a)).

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of a foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is

[19] Par. (2) was added by sec. 3 of Public Law 96-61 (93 Stat. 407).

applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.

(D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f)[20] FOREIGN ALLOCATION REPORT.—The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall prepare and submit a report to the Congress and the President, not later than July 1, of each year, setting forth—

(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) and all permits issued pursuant to section 204(b)(6)(B); and

(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.

(g)[20] RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(h)[20] PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

(1)[21] shall contain a preliminary description of the fishery and a preliminary determination as to—

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[20] Sec. 4(3) of Public Law 95-354 (92 Stat. 519) redesignated subsecs. (f) and (g) as (g) and (h), respectively, and added a new subsecs. (f).

[21] Sec. 4(4) of Public Law 95-354 amended par. (1) by effectively adding the text of clause (B).

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b) (2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery managment plan are promulgated pursuant to section 305.

(i) FULL OBSERVER COVERAGE PROGRAM.—(1) Except as provided in paragraph (2),[22] the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the fishery conservation zone.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the fishery conservation zone to another vessel, aboard which is a United States observer, the sta-

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[22] Sec. 236 of Public Law 96-561 (94 Stat. 3299) added subsec. (i). Sec. 237 of the same Act stated that subsec. (i) shall take effect on Oct. 1, 1981 and shall apply to permits issued under sec. 204 of this Act after Dec. 31, 1981.

Sec. 2(a)(5)(A)(ii) of Public Law 97-453 (96 Stat. 2482) added a new par. (6) to subsec. (i), effective Jan. 1, 1984. Upon such date, par. (6) will read as follows:

"(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

"(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

"(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

"(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

"(D) monitor the performance of observers to ensure that it meets the purposes of this Act."

tioning of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(3) [23] Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(j) [24] RECREATIONAL FISHING.—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for

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[23] Sec. 2(a)(5)(A)(i) of Public Law 97-453 (96 Stat. 2482) amended and restated par. (3). If formally read as follows:

"(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act."

[24] Sec. 2(a)(6) of Public Law 97-453 (96 Stat. 2483) added subsec. (j).

profit may engage in recreational fishing within the fishery conservation zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 305. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

SEC. 202.[25] INTERNATIONAL FISHERY AGREEMENTS.

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

[25] 16 U.S.C. 1822.

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation.

(e) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to a fishery conservation zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

SEC. 203.[26] CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) IN GENERAL.—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Commitee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) COMPUTATION OF 60-DAY PERIOD.—For purposes of subsection (a)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) CONGRESSIONAL PROCEDURES.—

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

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[26] 16 U.S.C. 1823.

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from the time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

SEC. 204.[27] PERMITS FOR FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit

[27] 16 U.S.C. 1824.

applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold[28] capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D)[29] the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E)[30] the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States; and

(F)[30] the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3).[31] The Secretary of State[32] shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B)[33] a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C)[33] a copy or a summary of the application to the appropriate council, upon its request.

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[28] Sec. 3(1) of Public Law 97-453 (96 Stat. 2483) inserted the word "hold".

[29] Subpar. (D) was amended and restated by sec. 4(5)(A) of Public Law 95-354 (92 Stat. 520).

[30] Sec. 4(5)(B) of Public Law 95-520 (92 Stat. 520) redesignated subpar. (E) as (F) and added a new subpar. (E).

[31] The words "and shall be set forth under the name of each Council to which it will be transmitted for comment" which previously appeared at this point, were struck out by sec. 3(2) of Public Law 97-453 (96 Stat. 2483).

[32] The words to this point beginning with "a notice of receipt * * *" were substituted in lieu of the words "such application in the Federal Register and" by sec. 4(6) of Public Law 95-354 (92 Stat. 520).

[33] Subpar. (B) and (C) were amended and restated by sec. 3(3) of Public Law 97-453 (96 Stat. 2483). They previously read as follows:

"(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

"(C) a monthly summary of foreign fishing applications including a report on approval applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate."

The requirement for the summary mentioned in subpar. (C) to be provided on a monthly basis had previously been added by sec. 208 of Public Law 96-470 (94 Stat. 2245).

(5) ACTION BY COUNCIL.—After receiving a copy or summary of an application under paragraph (4)(C), the Council may [34] prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—(A) [35] After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B),[35] the application, if he determines that the fishing described in the application will meet the requirements of this Act.

(B) [35] (i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by the United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

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[34] The words to this point in par. (5) were substituted in lieu of the words "After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall" by sec. 3(4) of Public Law 97–453 (96 Stat. 2483).

[35] Sec. 4(7) of Public Law 95–354 (92 Stat. 520) designated the first paragraph of par. (6) as subpar. (A), added the words "subject, to subparagraph (B)," and also added the text of subpar. (B).

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D)[36] If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E)[36] If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F)[36] Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.[37]

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefor. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10)[38] FEES.—Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the

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[36] Sec. 4(8) of Public Law 95-354 (92 Stat. 521) redesignated subpar. (D) as (F) and added new subpars. (D) and (E).

[37] A former subpar. (D), which previously appeared at this point and had required a copy of each application approved also be submitted to the Senate Foreign Relations Committee and the House Merchant Marine and Fisheries Committee, was struck out by sec. 111(b) of Public Law 96-470 (94 Stat. 2239).

[38] Sec. 232(b) of Public Law 96-561 (94 Stat. 3298) amended and restated par. (10), effective after 1981. Sec. 232(a) of Public Law 96-561 had amended the existing text of par. (10) providing interim fees for permits during 1981 only. This amendment was then superseded by the amendment contained in sec. 232(b) of that act.

United States an amount which bears to the total cost of carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 201(i)(4)) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) SANCTIONS.—If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall—

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(c) REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that

the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205.[39] IMPORT PROHIBITIONS.

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201 (c) and (d) and 204(b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

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[39] 16 U.S.C. 1825.

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriated to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.—As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

SEC. 206.[40] TRANSITIONAL PROVISIONS.

(a) DEFINITION.—For purposes of this section, the term "governing international fishery agreement" does not include any governing international fishery agreement other than a governing international fishery agreement approved by the Congress pursuant to section 2 of the Fishery Conservation Zone Transition Act, or pursuant to any amendment to such section 2 if the effective date of such amendment is not later than February 28, 1977.

(b) ACTION BY COUNCILS.—Section 204(b)(5) shall not apply to any application submitted by a foreign nation pursuant to a governing international fishery agreement for permits authorizing fishing during 1977 by vessels of that nation within the fishery conservation zone or for anadromous species or Continental Shelf fishery resources beyond such zone, but each appropriate Council may prepare and submit comments to the Secretary on such application—

(1) if the application has been received by the Council on or before the date of the enactment of this section, within 7 days after such date; or

(2) if the application is received by the Council from the Secretary of State after such date of enactment, within 7 days after the date on which the council receives the application.

The provisions of the Federal Advisory Committee Act shall not apply to the actions of any Council in preparing such comments.

(c) PERMITS.—Until May 1, 1977, the requirement in section 204(a) that foreign fishing vessels have on board a valid permit issued under section 204 shall not apply in the case of any foreign fishing vessel for which a permit is issued under an application to which subsection (b) applies. The failure of any such vessel to comply with such requirement before such date shall not be deemed to be a violation of section 307(1)(A).

(d) PERMIT FEES.—Until May 1, 1977, the requirement in section 204(b)(11), regarding the payment of applicable fees before foreign fishing permits are issued, may be waived by the Secretary with respect to permits to be issued under any application to which subsection (b) applies if the Secretary is satisfied that the foreign nation which made the application will pay the applicable fees

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[40] 16 U.S.C. 1826. Sec. 206 was added by Public Law 95–6 (91 Stat. 14).

before such date. Any permit issued under the waiver provided by this subsection shall expire on May 1, 1977, if the Secretary does not receive on or before such date the applicable fees for the permit.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401.[41] EFFECT ON LAW OF THE SEA TREATY.

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091–1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081–1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) AMENDMENTS.—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

(1) by amending section 2 thereof to read as follows:

"SEC. 2. If—

"(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

"(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

"(A) are unrelated to fishery conservation and management,

"(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

"(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

"(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

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[41] 16 U.S.C. 1881.

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

"(i) for the protection of such vessel and for the health and welfare of its crew;

"(ii) to secure the release of such vessel and its crew; and

"(iii) to determine the amount of any fine, license fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act."; and

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: "For purposes of this section, the term 'other direct charge' means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966." and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) AMENDMENT.—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)," and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) $5,000,000 for the fiscal year ending June 30, 1976.

(2) $5,000,000 for the transitional fiscal quarter ending September 30, 1976.
(3) $25,000,000 for the fiscal year ending September 30, 1977.
(4) $30,000,000 for the fiscal year ending September 30, 1978.
(5)[42] $30,000,000 for the fiscal year ending September 30, 1979.
(6)[43] $33,000,000 for the fiscal year ending September 30, 1980.
(7) $40,000,000 for the fiscal year ending September 30, 1981.
(8) $47,000,000 for the fiscal year ending September 30, 1982.
(9)[44] $59,000,000 for the fiscal year ending September 30, 1983.
(10)[44] $64,000,000 for the fiscal year ending September 30, 1984.
(11)[44] $69,000,000 for the fiscal year ending September 30, 1985.

b. Fishery Conservation Zone Transition Act, as amended

Partial text of Public Law 95-6, [H.J. Res. 240], 91 Stat. 14, approved February 21, 1977, as amended by Public Law 95-8 [H.R. 3753], 91 Stat. 18, approved March 3, 1977; by Public Law 95-73 [H.R. 5638], 91 Stat. 283, approved July 26, 1977; Public Law 95-219 [H.R. 9794], 91 Stat. 1613, approved December 28, 1977; Public Law 95-314 [H.R. 12571], 92 Stat. 376, approved July 1, 1978; and by Public Law 97-212 [H.R. 3816], 96 Stat. 143 at 148, approved June 30, 1982

JOINT RESOLUTION To give congressional approval to certain governing international fishery agreements negotiated in accordance with the Fishery Conservation and Management Act of 1976, and for other purposes.

Whereas the Government of the United States of America and the Governments of the People's Republic of Bulgaria, the Socialist Republic of Romania, the Republic of China, the German Democratic Republic, the Union of Soviet Socialist Republics, and the Polish People's Republic have signed governing international fishery agreements for the conservation, optimum utilization, and rational management of fisheries subject to the exclusive fishery management jurisdiction of the United States under the Fishery Conservation and Management Act of 1976 (Public Law 94-265) [1] (hereinafter referred to as the "Act"); and

Whereas the Act provides that after February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless (among other exceptions and requirements) such foreign fishing is authorized and conducted pursuant to a governing international fishery agreement; and

Whereas the Act also provides that no governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international agreement; and

Whereas the Act further provides that Congress may prohibit the entering into force and effect of any governing international fishery agreement by enactment of a joint resolution originating in either House of Congress during such 60-day period; and

Whereas, the sixty-day period will not elapse with respect to any governing international fishery agreement, referred to in the first clause of this preamble, before March 1, 1977, the date on which the fishery conservation zone of the United States takes effect; and

Whereas early congressional action on these governing international fishery agreements is necessary in order that fishing vessels of

[1] For text, see page 741.

the foreign nations concerned may be permitted to fish in the fishery conservation zone after February 28, 1977, in compliance with such Act; and

Whereas these governing international fishery agreements substantially comply with the requirements relating to such agreements contained in section 201(c) of the Act: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "Fishery Conservation Zone Transition Act".[2]

SEC. 2.[3] CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a)[4] Notwithstanding section 203 of the Fishery Conservation and Management Act of 1976, the governing international fishery agreement between the Government of the United States of America and—

(1) the Government of the People's Republic of Bulgaria Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 14, 1974;

(2) the Government of the Socialist Republic of Romania Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(3) the Government of the Republic of China Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(4) the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(5) the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

(6) the Government of the Polish People's Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 16, 1976;

(7)[5] the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

(8)[5] the Government of Japan Concerning Fisheries Off the Coasts of the United States (for 1977), as contained in the message to Congress from the President of the United States dated February 21, 1977;

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[2] 16 U.S.C. 1801 note.
[3] 16 U.S.C. 1823 note.
[4] The subsec. designation "(a)" and a new subsec. (b) were added by sec. 10(a) of Public Law 97-212 (96 Stat. 148).
[5] Pars. (7), (8), (9), and (10) were added by Public Law 95-8 (91 Stat. 18).

(9)[5] [6] the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

(10)[5] [6] the Government of Spain Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977; and

(11)[7] the Government of Mexico Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated October 7, 1977;

is hereby approved by the Congress as a governing international fishery agreement for purposes of the Fishery Conservation and Management Act of 1976. Each such agreement referred to in paragraphs (1) through (6) shall enter into force and effect with respect to the United States on the date of the enactment of this joint resolution, and each such agreement referred to in paragraphs (7) through (11) shall enter into force and effect with respect to the United States on February 27, 1977.[8]

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SEC. 4. REPEAL OF NORTHWEST ATLANTIC FISHERIES ACT OF 1950.

The Northwest Atlantic Fisheries Act of 1950 (16 U.S.C. 981-991) is repealed as of March 1, 1977.

SEC. 5.[9] RECIPROCAL FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND CANADA.

(a)[10] CONGRESSIONAL APPROVAL.—The Congress hereby approves the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the Government of Canada (hereinafter in this section referred to as the 'Agreement') as contained in the message to Congress from the President of the United States dated May 1, 1978. The Agreement shall be in force and effect with respect to the United States from January 1, 1978, until such later date in 1978 as may be determined pursuant to the terms of the Agreement.

(b) APPLICATION.—During the period when the Agreement is in force and effect with respect to the United States—

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[6] Sec. 10(b) of Public Law 97-212 (96 Stat. 148) included the following:

"(b) Notwithstanding any provision of the Act entitled 'An Act for the conservation and management of the fisheries, and for other purposes', dated April 13, 1976 (16 U.S.C. 1810 et seq.), the governing international fishery agreements referred to in section 2(a) (9) and (10) of the Fishery Conservation Zone Transition Act shall be extended, and shall be in force and effect with respect to the United States, for the period of time ending on—

"(1) the deadline for completion of Congressional review, pursuant to section 203(a) of such 1976 Act, of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that is a party to the agreement in question; or

"(2) July 31, 1982, if the United States and the respective foreign government that is a party to the agreement in question fail to sign a new governing international fishery agreement on or before that date."

[7] Par. (11) was added by sec. 1 of Public Law 95-219 (91 Stat. 1613).

[8] This sentence was amended and restated by Public Law 95-8 in order to reflect the additions of pars. (7)-(10); further amended by Public Law 95-219 to reflect the addition of par. (11).

[9] 16 U.S.C. 1823 note. Sec. 5 was added by Public Law 95-73 (91 Stat. 283).

[10] Subsec. (a) was amended and restated by Public Law 95-314 (92 Stat. 376). Former subsec. (a) concerned congressional approval for a 1977 Reciprocal Fisheries Agreement between the United States and Canada.

(1) vessels and nationals of Canada may fish within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, but only pursuant to, and in accordance with, the provisions of the Agreement; and

(2) title II of the Fishery Conservation and Management Act of 1976 (relating to foreign fishing and international fishery agreements) and section 307 of such Act of 1976 (relating to prohibited acts) shall not apply with respect to fishing within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, by vessels and nationals of Canada which is pursuant to, and in accordance with, the provisions of the Agreement.

(c) FISHING STATISTICS.—(1) Any person who—

(A) owns or operates any fishing vessel which—

(i) is a vessel of the United States, and

(ii) engages in fishing to which the Agreement applies; or

(B) directly or indirectly receives, or may receive, fish to which the Agreement applies in the course of a commercial activity in quantities determined by the Secretary to be sufficient to assist in the carrying out of this paragraph,

shall submit to the Secretary such statistics (including, but not limited to, catch data) regarding such fishing or such receipt of fish as are necessary to fulfill the obligations of the United States under article XIII of the Agreement. The Secretary, after consultation with the Secretary of State, shall issue such regulations as are necessary and appropriate to carry out the purposes of this paragraph. Section 303(d) of the Fishery Conservation and Management Act of 1976 (relating to the confidentiality of statistics) shall apply with respect to all statistics submitted under this paragraph.

(2) Any violation of paragraph (1), or of any regulation issued pursuant to paragraph (1), by any person shall be deemed to be an act prohibited by section 307 of the Fishery Conservation and Management Act of 1976. Any person who commits any such violation shall be liable to the United States for a civil penalty as provided for in section 308 of such Act of 1976. Sections 309 (relating to criminal offenses) and 310 (relating to civil forfeiture) of such Act of 1976 shall not apply with respect to any such violation.

(d) DEFINITIONS.—As used in this section, the terms "anadromous species", "Continental Shelf fishery resources", "fishing conservation zone", "fishing", "fishing vessel", "Secretary", and "vessel of the United States" shall have the same respective meanings as are given to such terms in section 3 of the Fishery Conservation and Management Act of 1976.

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c. Governing International Fishery Agreement With Portugal

Partial text of Public Law 96-561 [S. 2163], 94 Stat. 3275 at 3287, approved December 22, 1980

AN ACT To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

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SEC. 145. GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH PORTUGAL.

Notwithstanding section 203 of the Fishery Conservation and Management Act of 1976, the governing international fishery agreement between the Government of the United States of America and the Government of Portugal Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated December 1, 1980—

(1) is hereby approved by Congress as a governing international fishery agreement for the purposes of such Act of 1976; and

(2) shall enter into force and effect with respect to the United States on the date of the enactment of this title.

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d. Governing International Fishery Agreements

Title IV of Public Law 97-389 [H.R. 3942], 96 Stat. 1949, at 1954, approved December 29, 1982

AN ACT To amend the Commercial Fisheries Research and Development Act of 1964.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

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TITLE IV—GOVERNING INTERNATIONAL FISHERY AGREEMENTS

SEC. 401.[1] Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) signed at Washington on September 10, 1982, is approved, and shall become effective on January 1, 1983.

SEC. 402.[1] Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Spain pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) signed on July 29, 1982, is approved.

[1] 16 U.S.C. 1823 note.

e. Deep Seabed Hard Mineral Resources Act [1]

Public Law 96-283 [H.R. 2759], 94 Stat. 553, approved June 28, 1980, as amended by Public Law 97-416 [H.R. 6120], 96 Stat. 2084, approved January 4, 1983

AN ACT To establish an interim procedure for the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deep Seabed Hard Mineral Resources Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the United States' requirements for hard minerals to satisfy national industrial needs will continue to expand and the demand for such minerals will increasingly exceed the available domestic sources of supply;

(2) in the case of certain hard minerals, the United States is dependent upon foreign sources of supply and the acquisition of such minerals from foreign sources is a significant factor in the national balance-of-payments position;

(3) the present and future national interest of the United States requires the availability of hard mineral resources which is independent of the export policies of foreign nations;

(4) there is an alternate source of supply, which is significant in relation to national needs, of certain hard minerals, including nickel, copper, cobalt, and manganese, contained in the nodules existing in great abundance on the deep seabed;

(5) the nations of the world, including the United States, will benefit if the hard mineral resources of the deep seabed beyond limits of national jurisdiction can be developed and made available for their use;

(6) in particular, future access to the nickel, copper, cobalt, and manganese resources of the deep seabed will be important to the industrial needs of the nations of the world, both developed and developing;

(7) on December 17, 1970, the United States supported (by affirmative vote) the United Nations General Assembly Resolution 2749 (XXV) declaring inter alia the principle that the mineral resources of the deep seabed are the common heritage of mankind, with the expectation that this principle would be legally defined under the terms of a comprehensive international Law of the Sea Treaty yet to be agreed upon;

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[1] 30 U.S.C. 1401-1473.

(8) it is in the national interest of the United States and other nations to encourage a widely acceptable Law of the Sea Treaty, which will provide a new legal order for the oceans covering a broad range of ocean interests, including exploration for and commercial recovery of hard mineral resources of the deep seabed;

(9) the negotiations to conclude such a Treaty and establish the international regime governing the exercise of rights over, and exploration of, the resources of the deep seabed, referred to in General Assembly Resolution 2749 (XXV) are in progress but may not be concluded in the near future;

(10) even if such negotiations are completed promptly, much time will elapse before such an international regime is established and in operation;

(11) development of technology required for the exploration and recovery of hard mineral resources of the deep seabed will require substantial investment for many years before commercial production can occur, and must proceed at this time if deep seabed minerals are to be available when needed;

(12) it is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reasonable regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law;

(13) pending a Law of the Sea Treaty, and in the absence of agreement among states on applicable principles of international law, the uncertainty among potential investors as to the future legal regime is likely to discourage or prevent the investments necessary to develop deep seabed mining technology;

(14) pending a Law of the Sea Treaty, the protection of the marine environment from damage caused by exploration or recovery of hard mineral resources of the deep seabed depends upon the enactment of suitable interim national legislation;

(15) a Law of the Sea Treaty is likely to establish financial arrangements which obligate the United States or United States citizens to make payments to an international organization with respect to exploration or recovery of the hard mineral resources of the deep seabed; and

(16) legislation is required to establish an interim legal regime under which technology can be developed and the exploration and recovery of the hard mineral resources of the deep seabed can take place until such time as a Law of the Sea Treaty enters into force with respect to the United States.

(b) PURPOSES.—The Congress declares that the purposes of this Act are—

(1) to encourage the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) pending the ratification by, and entering into force with respect to, the United States of such a Treaty, to provide for

the establishment of an international revenue-sharing fund the proceeds of which shall be used for sharing with the international community pursuant to such Treaty;

(3) to establish, pending the ratification by, and entering into force with respect to, the United States of such a Treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(4) to accelerate the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assure that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea; and

(5) to encourage the continued development of technology necessary to recover the hard mineral resources of the deep seabed.

SEC. 3. INTERNATIONAL OBJECTIVES OF THIS ACT.

(a) DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.—By the enactment of this Act, the United States—

(1) exercises its jurisdiction over United States citizens and vessels, and foreign persons and vessels otherwise subject to its jurisdiction, in the exercise of the high seas freedom to engage in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in accordance with generally accepted principles of international law recognized by the United States; but

(2) does not thereby assert sovereignty of sovereign or exclusive rights or jurisdiction over, or the ownership of, any areas or resources in the deep seabed.

(b) SECRETARY OF STATE.—(1) The Secretary of State is encouraged to negotiate successfully a comprehensive Law of the Sea Treaty which, among other things, provides assured and nondiscriminatory access to the hard mineral resources of the deep seabed for all nations, gives legal definition to the principle that the resources of the deep seabed are the common heritage of mankind, and provides for the establishment of requirements for the protection of the quality of the environment as stringent as those promulgated pursuant to this Act.

(2) Until such a Treaty is concluded, the Secretary of State is encouraged to promote any international actions necessary to adequately protect the environment from adverse impacts which may result from any exploration for and commercial recovery of hard mineral resources of the deep seabed carried out by persons not subject to this Act.

SEC. 4. DEFINITIONS.

For purposes of this Act, the term—

(1) "commercial recovery" means—

(A) any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to

earn a net profit, whether or not such net profit is actually earned;

(B) if such recovered hard mineral resource will be processed at sea, such processing; and

(C) if the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(2) "Continental Shelf" means—

(A) the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(B) the selected and subsoil of similar submarine areas adjacent to the coast of islands;

(3) "controlling interest", for purposes of paragraph 14(C) of this section, means a director or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(4) "deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(A) the Continental Shelf of any nation; and

(B) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(5) "exploration" means—

(A) any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) the nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(B) the taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication, and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(6) "hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(7) "international agreement" means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(8) "licensee" means the holder of a licensee issued under title I of this Act to engage in exploration;

(9) "permittee" means the holder of a permit issued under title I of this Act to engage in commercial recovery;

(10) "person" means any United States citizen, any individual, and any other corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(11) "reciprocating state" means any foreign nation designated as such by the Administration under section 118;

(12) "Administrator" means the administrator of the National Oceanic and Atmospheric Administration;

(13) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(14) "United States citizen" means—

(A) any individual who is a citizen of the United States;

(B) any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(C) any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in subparagraph (A) or (B).

TITLE I—REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

SEC. 101. PROHIBITED ACTIVITIES BY UNITED STATES CITIZENS.

(a) PROHIBITED ACTIVITIES AND EXCEPTIONS.—(1) No United States citizen may engage in any exploration or commercial recovery unless authorized to do so under—

(A) a license or a permit issued under this title;

(B) a license, permit, or equivalent authorization issued by a reciprocating state; or

(C) an international agreement which is in force with respect to the United States.

(2) The prohibitions of this subsection shall not apply to any of the following activities:

(A) Scientific research, including that concerning hard mineral resources.

(B) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment.

(C) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction, or testing is conducted on shore, or does not involve the recovery of any incidental hard mineral resources.

(D) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under this title, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement.

(E) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(b) EXISTING EXPLORATION.—(1) Subsection (a)(1)(A) shall not be deemed to prohibit any United States citizen who is engaged in exploration before the effective date of this Act from continuing to engage in such exploration—

(A) if such citizen applies for a license under section 103(a) with respect to such exploration within such reasonable period of time, after the date on which initial regulations to implement section 103(a) are issued, as the Administrator shall prescribe; and

(B) until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(2) Notwithstanding paragraph (1), if the President by Executive order determines that immediate suspension of exploration activities is necessary for the reasons set forth in section 106(a)(2)(B) or the Administrator determines that immediate suspension of activities is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, the Administrator is authorized, notwithstanding any other requirement of this Act, to issue an emergency order requiring any United States citizen who is engaged in exploration before the effective date of this Act to immediately suspend exploration activities. The issuance of such emergency order is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(3) The timely filing of any application for a license under paragraph (1)(A) shall entitle the applicant to priority of right for the issuance of such license under section 103(b). In any case in which more than one application referred to in paragraph (1) is filed based on exploration plans required by section 103(a)(2) which refer to all or part of the same deep seabed area, the Administrator shall, in taking action on such applications, apply principles of equity which take into consideration, among other things, the date on which the applicants or predecessors in interest, or component organizations thereof, commenced exploration activities and the continuity and extent of such exploration and amount of funds expended with respect to such exploration.

(c) INTERFERENCE.—No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the United States to the licensee or permittee under this Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. United States citizens shall exercise their rights on the high seas

with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

SEC 102. LICENSES FOR EXPLORATION AND PERMITS FOR COMMERCIAL RECOVERY.

(a) AUTHORITY TO ISSUE.—Subject to the provisions of this Act, the Administrator shall issue to applicants who are eligible therefor licenses for exploration and permits for commercial recovery.

(b) NATURE OF LICENSES AND PERMITS.—(1) A license or permit issued under this title shall authorize the holder thereof to engage in exploration or commercial recovery, as the case may be, consistent with the provisions of this Act, the regulations issued by the Administrator to implement the provisions of this Act, and the specific terms, conditions, and restrictions applied to the license or permit by the Administrator.

(2) Any license or permit issued under this title shall be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(3) A valid existing license shall entitle the holder, if otherwise eligible under the provisions of this Act and regulations issued under this Act, to a permit for commercial recovery. Such a permit recognizes the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of this Act.

(4) In the event of interference with the exploration or commercial recovery activities of a licensee or permittee by nationals of other states, the Secretary of State shall use all peaceful means to resolve the controversy by negotiation, conciliation, arbitration, or resort to agreed tribunals.

(c) RESTRICTIONS.—(1) The Administrator may not issue—

(A) any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(B) any license or permit the exploration plan or recovery plan of which, submitted pursuant to section 103(a)(2), would apply to an area to which applies, or would conflict with, (i) any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under section 103(b), (ii) any exploration plan or recovery plan associated with any existing license or permit, or (iii) any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to this title;

(C) a permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to other than the licensee for such area;

(D) any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(E) any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within *the 3-year period before the date of* application for such license or permit, (i) the applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant, or (ii) a license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106; or

(F) a license or permit, or approve the transfer of a license or permit, except to a United States citizen.

(2) No permittee may use any vessel for the commercial recovery of hard mineral resources or for the processing at sea at hard mineral resources recovered under the permit issued to the permittee unless the vessel is documented under the laws of the United States.

(3) Each permittee shall use at least one vessel documented under the laws of the United States for the transportation from each mining site of hard mineral resources recovered under the permit issued to the permittee.

(4) For purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in the commercial recovery, processing, or transportation from any mining site of hard mineral resources recovered under a permit issued under this title shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936, and shall be deemed to be a vessel as defined in section 1101(b) of that Act.

(5) Except as otherwise provided in this paragraph, the processing on land of hard mineral resources recovered pursuant to a permit shall be conducted within the United States: *Provided,* That the President does not determine that such restrictions contravene the overriding national interests of the United States. The Administrator may allow the processing of hard mineral resources at a place other than within the United States if he finds, after opportunity for an agency hearing, that—

(A) the processing of the quantity concerned of such resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of a permittee; and

(B) satisfactory assurances have been given by the permittee that such resource, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

SEC. 103. LICENSE AND PERMIT APPLICATIONS, REVIEW, AND CERTIFICATION.

(a) APPLICATIONS.—(1) Any United States citizen may apply to the Administrator for the issuance or transfer of a license for exploration or a permit for commercial recovery.

(2)(A) Applications for issuance or transfer of licenses for exploration and permits for commercial recovery shall be made in such form and manner as the Administrator shall prescribe in general and uniform regulations and shall contain such relevant financial, technical, and environmental information as the Administrator may by regulations require as being necessary and appropriate for carrying out the provisions of this title. In accordance with such regulations, each applicant for the issuance of a license shall submit an exploration plan as described in subparagraph (B), and each applicant for a permit shall submit a recovery plan as described in subparagraph (C).

(B) The exploration plan for a license shall set forth the activities proposed to be carried out during the period of the license, describe the area to be explored, and include the intended exploration schedule and methods to be used, the development and testing of systems for commercial recovery to take place under the terms of the license, an estimated schedule of expenditures, measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery, and such other information as is necessary and appropriate to carry out the provisions of this title. The area set forth in an exploration plan shall be of sufficient size to allow for intensive exploration.

(C) The recovery plan for a permit shall set forth the activities proposed to be carried out during the period of the permit, and shall include the intended schedule of commercial recovery, environmental safeguards and monitoring systems, details of the area or areas proposed for commercial recovery, a resource assessment thereof, the methods and technology to be used for commercial recovery and processing, the methods to be used for disposal of wastes from recovery and processing, and such other information as is necessary and appropriate to carry out the provisions of this title.

(D) The applicant shall select the size and location of the area of the exploration plan or recovery plan, which area shall be approved unless the Administrator finds that—

(i) the area is not a logical mining unit; or

(ii) commercial recovery activities in the proposed location would result in a significant adverse impact on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions.

(E) For purposes of subparagraph (D), "logical mining unit" means—

(i) in the case of a license for exploration, an area of the deep seabed which can be explored under the license in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environ-

mental characteristics, and the state of the technology of the applicant as set forth in the exploration plan; or

(ii) in the case of a permit, an area of the deep seabed—

(I) in which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(II) which is not larger than is necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(III) in relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(b) PRIORITY OF RIGHT FOR ISSUANCE.—Subject to section 101(b), priority of right for the issuance of licenses to applicants shall be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under subsection (a)(2) of this section are filed with the Administrator. Priority of right shall not be lost in the case of any application filed which is in substantial but not full compliance with such requirements if the applicant thereafter brings the application into conformity with such requirements within such reasonable period of time as the Administrator shall prescribe in regulations.

(c) ELIGIBILITY FOR CERTIFICATION.—Before the Administrator may certify any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with other departments and agencies pursuant to subsection (e) of this section, that—

(1) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will be financially responsible to meet all obligations which may be required of a licensee or permittee to engage in the exploration or commercial recovery proposed in the application;

(2) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will have the tehnological capability to engage in such exploration or commercial recovery;

(3) the applicant has satisfactorily fulfilled all obligations under any license or permit previously issued or transferred to the applicant under this Act; and

(4) the proposed exploration plan or recovery plan of the applicant meets the requirements of this Act and the regulations issued under this Act.

(d) ANTITRUST REVIEW.—(1) Whenever the Administrator receives any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator shall transmit promptly a complete copy of such application to the Attorney General of the United States and the Federal Trade Commission.

(2) The Attorney General and the Federal Trade Commission shall conduct such antitrust review of the application as they deem appropriate and shall, if they deem appropriate, advise the Administrator of the likely effects of such issuance or transfer on competition.

(3) The Attorney General and the Federal Trade Commission may make any recommendations they deem advisable to avoid any action upon such application by the Administrator which would create or maintain a situation inconsistent with the antitrust laws. Such recommendations may include, without limitation, the denial of issuance or transfer of the license or permit or issuance or transfer upon such terms and conditions as may be appropriate.

(4) Any advice or recommendation submitted by the Attorney General or the Federal Trade Commission pursuant to this subsection shall be submitted within 90 days after receipt by them of the application. The Administrator shall not issue or transfer the license or permit during that 90-day period, except upon written confirmation by the Attorney General and the Federal Trade Commission that neither intends to submit any further advice or recommendation with respect to the application.

(5) If the Administrator decides to issue or transfer the license or permit with respect to which denial of the issuance or transfer of the license or permit has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer the license or permit without imposing those terms and conditions recommended by the Attorney General or the Federal Trade Commission as appropriate to prevent any situation inconsistent with the antitrust laws, the Administrator shall, prior to or upon issuance or transfer of the license or permit, notify the Attorney General and the Federal Trade Commission of the reasons for such decision.

(6) The issuance or transfer of a license or permit under this title shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(7) As used in this subsection, the term "antitrust laws" means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1-7); sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8-11); the Clayton Act (15 U.S.C. 12 et seq.); the Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13-13b and 21a); and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(e) OTHER FEDERAL AGENCIES.—The Administrator shall provide by regulation for full consultation and cooperation, prior to certification of an application for the issuance or transfer of any license for exploration or permit for commercial recovery and prior to the issuance or transfer of such a license or permit, with other Federal agencies or departments which have programs or activities within their statutory responsibilities which would be affected by the activities proposed in the application for the issuance or transfer of a license or permit. Not later than 30 days after the date of enactment of this Act, the heads of any Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the

recovery or processing of hard mineral resources shall transmit to the Administrator written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law. To the extent possible, such agencies shall cooperate to reduce the number of separate actions required to satisfy the statutory responsibilities of these agencies. The Administrator shall transmit to each such agency or department a complete copy of each application and each such agency or department, based on its legal responsibilities and authorities, may, not later than 60 days after receipt of the application, recommend certification of the application, issuance or transfer of the license or permit, or denial of such certification, issuance, or transfer. In any case in which an agency or department recommends such a denial, it shall set forth in detail the manner in which the area of responsibility and shall indicate how the application may be amended, or how terms, conditions, or restrictions might be added to the license or permit, to assure compliance with such law or regulation.

(f) REVIEW PERIOD.—All time periods for the review of an application for issuance or transfer of a license or permit established pursuant to this section shall, to the maximum extent practicable, run concurrently from the date on which the application is received by the Administrator.

(g) APPLICATION CERTIFICATION.—Upon making the applicable determinations and findings required in sections 101, 102, and this section with respect to any applicant for the issuance or transfer of a license or a permit and the exploration or commercial recovery proposed by such applicant, after completion of procedures for receiving the application required by this Act, and upon payment by the applicant of the fee required under section 104, the Administrator shall certify the application for the issuance or transfer of the license or permit. The Administrator, to the maximum extent possible, shall endeavor to complete certification action on the application within 100 days after its submission. If final certification or denial of certification has not occurred within 100 days after submission of the application, the Administrator shall inform the applicant in writing of the then pending unresolved issues, the Administrator's efforts to resolve them, and an estimate of the time required to do so.

SEC. 104. LICENSE AND PERMIT FEES.

No application for the issuance or transfer of a license for exploration or permit for commercial recovery shall be certified unless the applicant pays to the Administrator a reasonable administrative fee which shall be deposited into miscellaneous receipts of the Treasury. The amount of the administrative fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred in reviewing and processing the application.

SEC. 105. LICENSE AND PERMIT TERMS, CONDITIONS, AND RESTRICTIONS; ISSUANCE AND TRANSFER OF LICENSES AND PERMITS.

(a) ELIGIBILITY FOR ISSUANCE OR TRANSFER OF LICENSE OR PERMIT.—Before issuing or transferring a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with interested departments and agen-

cies pursuant to section 103(e), and upon considering public comments received with respect to the license or permit, that the exploration or commercial recovery proposed in the application—

(1) will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law;

(2) will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

(3) will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict;

(4) cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable environmental impact statement prepared pursuant to section 109(c) or 109(d); and

(5) will not pose an inordinate threat to the safety of life and property at sea.

(b) ISSUANCE AND TRANSFER OF LICENSES AND PERMITS WITH TERMS, CONDITIONS, AND RESTRICTIONS.—(1) Within 180 days after certification of any application for the issuance or transfer of a license or permit under section 103(g), the Administrator shall propose terms and conditions for, and restrictions on, the exploration or commercial recovery proposed in the application which are consistent with the provisions of this Act and regulations issued under this Act. If additional time is needed, the Administrator shall notify the applicant in writing of the reasons for the delay and indicate the approximate date on which the proposed terms, conditions, and restrictions will be completed. The Administrator shall provide to each applicant a written statement of the proposed terms, conditions, and restrictions. Such terms, conditions, and restrictions shall be generally specified in regulations with general criteria and standards to be used in establishing such terms, conditions and restrictions for a license or permit and shall be uniform in all licenses or permits, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea.

(2) After preparation and consideration of the final environmental impact statement pursuant to section 109(d) on the proposed issuance of a license or permit and subject to the other provisions of this Act, the Administrator shall issue to the applicant the license or permit with the terms, conditions, and restrictions incorporated therein.

(3) The licensee or permittee to whom a license or permit is issued or transferred shall be deemed to have accepted the terms, conditions, and restrictions in the license or permit if the licensee or permittee does not notify the Administrator within 60 days after receipt of the license or permit of each term, condition, and restriction with which the licensee or permittee takes exception. The licensee or permittee, may, in addition to such objections as may be raised under applicable provisions of law, object to any term, condi-

tion, or restriction on the ground that the term, condition, or restriction is inconsistent with the Act or the regulations promulgated thereunder. If, after the Administrator takes final action on these objections, the licensee or permittee demonstrates that a dispute remains on a material issue of fact, the licensee or permittee is entitled to a decision on record after the opportunity for an agency hearing pursuant to sections 556 and 557 of title 5, United States Code. Any such decision made by the Administrator shall be subject to judicial review as provided in chapter 7 of title 5, United States Code.

(c) MODIFICATION AND REVISION OF TERMS, CONDITIONS, AND RESTRICTIONS.—(1) After the issuance or transfer of any license or permit under subsection (b), the Administrator, after consultation with interested agencies and the licensee or permittee, may modify any term, condition, or restriction in such license or permit—

(A) to avoid unreasonable interference with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law;

(B) if relevant data and other information (including, but not limited to, data resulting from exploration or commercial recovery activities under the license or permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea and if such modification is consistent with the regulations issued to carry out section 109(b);

(C) to avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(D) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(2) During the term of a license or a permit, the licensee or permittee may submit to the Administrator an application for a revision of the license or permit or the exploration plan or recovery plan associated with the license or permit. The Administrator shall approve such application upon a finding in writing that the revision will comply with the requirements of this Act and the regulations issued under this Act.

(3) The Administrator shall establish, by regulation, guidelines for a determination of the scale or extent of a proposed modification or revision for which any or all license or permit application requirements and procedures, including a public hearing, shall apply. Any increase in the size of the area, or any change in the location of an area, to which an exploration plan or a recovery plan applies, except an incidental increase or change, must be made by application for another license or permit.

(4) The procedures set forth in subsection (b)(3) of this section shall apply with respect to any modification under this subsection in the same manner, and to the same extent, as if such modification were an initial term, condition, or restriction proposed by the Administrator.

(d) PRIOR CONSULTATIONS.—Prior to making a determination to issue, transfer, modify, or renew a license or permit under this sec-

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tion, the Administrator shall consult with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), if the activities undertaken pursuant to such license or permit could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

SEC. 106. DENIAL OF CERTIFICATION OF APPLICATIONS AND OF ISSUANCE, TRANSFER, SUSPENSION, AND REVOCATION OF LICENSES AND PERMITS; SUSPENSION AND MODIFICATON OF ACTIVITIES.

(a) DENIAL, SUSPENSION, MODIFICATION, AND REVOCATION.—(1) The Administration may deny certification of an application for the issuance or transfer of, and may deny the issuance or transfer of, a license for exploration or permit for commercial recovery if the Administrator finds that the applicant, or the activities proposed to be undertaken by the applicant, do not meet the requirements set forth in section 103(c), section 105(a), or in any other provision of this Act, or any regulation issued under this Act, for the issuance or transfer of a license or permit.

(2) The Administrator may—

(A) in addition to, or in lieu of, the imposition of any civil penalty under section 302(a), or in addition to the imposition of any fine under section 303, suspend or revoke any license or permit issued under this Act, or suspend or modify any particular activities under such a license or permit, if the licensee or permittee, as the case may be, substantially fails to comply with any provision of this Act, any regulation issued under this Act, or any term, condition, or restriction of the license or permit; and

(B) suspend or modify particular activities under any license or permit, if the President determines that such suspension or modification is necessary (i) to aviod any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States, or (ii) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(3) No action may be taken by the Administrator to deny issuance or transfer of or to revoke any license or permit or, except as provided in subsection (c), to suspend any license or permit or suspend or modify particular activities under a license or permit, unless the Administrator—

(A) publishes in the Federal Register and gives the applicant, licensee, or permittee, as the case may be, written notice of the intention of the Administrator to deny the issuance or transfer of or to suspend, modify, or revoke the license or permit and the reason therefor; and

(B) if the reason for the proposed denial, suspension, modification, or revocation is a deficiency which the applicant, licensee, or permittee can correct, affords the applicant, licensee, or permittee a reasonable time, but not more than 180 days from the date of the notice or such longer period as the Administra-

tor may establish for good cause shown, to correct such deficiency.

(4) The Administrator shall deny issuance or transfer of, or suspend or revoke, any license or permit or order the suspension or modification of particular activities under a license or permit—

(A) on the thirtieth day after the date of the notice given to the applicant, licensee, or permittee under paragraph (3)(A) unless before such day the applicant, licensee, or permittee requests a review of the proposed denial, suspension, modification, or revocation; or

(B) on the last day of the period established under paragraph (3)(B) in which the applicant, licensee, or permittee must correct a deficiency, if such correction has not been made before such day.

(b) ADMINISTRATIVE REVIEW OF PROPOSED DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION.—Any applicant, licensee, or permittee, as the case may be, who makes a timely request under subsection (a) for review of a denial of issuance or transfer, or a suspension or revocation, or a license for exploration or permit for commercial recovery, or a suspension or modification of particular activities under such a license or permit, is entitled to an adjudication on the record after an opportunity for an agency hearing with respect to such denial or suspension, revocation, or modification.

(c) EFFECT ON ACTIVITIES; EMERGENCY ORDERS.—The issuance of any notice of proposed suspension or revocation of a license for exploration or permit for commercial recovery or proposed suspension or modification of particular activities under such a license or permit shall not affect the continuation of exploration or commercial recovery activities by the licensee or permittee. The provisions of paragraphs (3) and (4) of subsection (a) and the first sentence of this subsection shall not apply when the President determines by Executive order that an immediate suspension of a license for exploration or permit for commercial recovery, or immediate suspension or modification of particular activities under such a license or permit, is necessary for the reasons set forth in subsection (a)(2)(B), or the Administrator determines that an immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, and the Administrator issues an emergency order requiring such immediate suspension.

(d) JUDICIAL REVIEW.—Any determination of the Administrator, after any appropriate administrative review under subsection (b), to certify or deny certification of an application for the issuance or transfer of, or to issue, deny issuance of, transfer, deny the transfer of, modify, renew, suspend, or revoke any license for exploration or permit for commercial recovery, or suspend or modify particular activities under such a license or permit, or any immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, pursuant to subsection (c), is subject to judicial review as provided in chapter 7 of title 5, United States Code.

SEC. 107. DURATION OF LICENSES AND PERMITS.

(a) DURATION OF A LICENSE.—Each license for exploration shall be issued for a period of 10 years. If the licensee has substantially complied with the license and the exploration plan associated therewith and has requested extensions of the license, the Administrator shall extend the license on terms, conditions, and restrictions consistent with this Act and the regulations issued under this Act for periods of not more than 5 years each.

(b) DURATION OF A PERMIT.—Each permit for commercial recovery shall be issued for a term of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The permit of any permittee who is not recovering hard mineral resources in commercial quantities at the end of 10 years shall be terminated; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, unavoidable delays in construction, major unanticipated vessel repairs that prevent the permittee from conducting commercial recovery activities during an annual period, or other circumstances beyond the control of the permittee, extend the 10-year period, but not beyond the initial 20-year term of the permit.

SEC 108. DILIGENCE REQUIREMENTS.

(a) IN GENERAL.—The exploration plan or recovery plan and the terms, conditions, and restrictions of each, license and permit issued under this title shall be designed to assure diligent development. Each licensee shall pursue diligently the activities described in the exploration plan of the licensee, and each permittee shall pursue diligently the activities described in the recovery plan of the permittee.

(b) EXPENDITURES.—Each license shall require such periodic reasonable expenditures for exploration by the licensee as the Administrator shall establish, taking into account the size of the area of the deep seabed to which the exploration plan associated with the license applies and the amount of funds which is estimated by the Administrator to be required for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. Such required expenditures shall not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(c) COMMERCIAL RECOVERY.—Once commercial recovery is achieved, the Administrator shall, within reasonable limits and taking into consideration all relevant factors, require the permittee to maintain commercial recovery throughout the period of the permit; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, or other circumstances beyond the control of the permittee, authorize the temporary suspension of commercial recovery activities. The duration of such a suspension shall not exceed one year at any one time, unless the Administrator determines that conditions justify an extension of the suspension.

SEC. 109. PROTECTION OF THE ENVIRONMENT.

(a) ENVIRONMENTAL ASSESSMENT—(1) DEEP OCEAN MINING ENVIRONMENTAL STUDY (DOMES).—The Administrator shall expand and

accelerate the program assessing the effects on the environment from exploration and commercial recovery activities, including seabased processing and the disposal at sea of processing wastes, so as to provide an assessment, as accurate as practicable, of environmental impacts of such activities for the implementation of subsections (b), (c), and (d).

(2) SUPPORTING OCEAN RESEARCH.—The Administrator also shall conduct a continuing program of ocean research to support environmental assessment activity through the period of exploration and commercial recovery authorized by this Act. The program shall include the development, acceleration, and expansion, as appropriate, of studies of the ecological, and physical aspects of the deep seabed in general areas of the ocean where exploration and commercial development under the authority of this Act are likely to occur, including, but not limited to—

(A) natural diversity of the deep seabed biota;

(B) life histories of major benthic, midwater, and surface organisms most likely to be affected by commercial recovery activities;

(C) long- and short-term effects of commercial recovery on the deep seabed biota; and

(D) assessment of the effects of seabased processing activities.

Within 160 days after the date of enactment of this Act, the Administrator shall prepare a plan to carry out the program described in this subsection, including necessary funding levels for the next five fiscal years, and shall submit the plan to the Congress.

(b) TERMS, CONDITIONS, AND RESTRICTIONS.—Each license and permit issued under this title shall contain such terms, conditions, and restrictions, established by the Administrator, which prescribe the actions the licensee or permittee shall take in the conduct of exploration and commercial recovery activities to assure protection of the environment. The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Before establishing such terms, conditions, and restrictions, the Administrator shall consult with the Administrator of the Environmental Protection Agency, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating, concerning such terms, conditions, and restrictions, and the Administrator shall take into account and give due consideration to the information contained in each final environmental impact statement prepared with respect to such license or permit pursuant to subsection (d).

(c) PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.—(1) If the Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, determines that a programmatic environmental impact statement is required, the Administrator shall, as soon as practicable after the enactment of this Act, with respect

to the areas of the oceans in which any United States citizen is expected to undertake exploration and commercial recovery under the authority of this Act—

(A) prepare and publish draft programmatic environmental impact statements which assess the environmental impacts of exploration and commercial recovery in such areas;

(B) afford all interested parties a reasonable time after such dates of publication to submit comments to the Administrator on such draft statements; and

(C) thereafter prepare (giving full consideration to all comments submitted under subparagraph (B)) and publish final programmatic environmental impact statements regarding such areas.

(2) With respect to the area of the oceans in which exploration and commercial recovery by any United States citizen will likely first occur under the authority of this Act, the Administrator shall prepare a draft and final programmatic environmental impact statement as required under paragraph (1), except that—

(A) the draft programmatic environmental impact statement shall be prepared and published as soon as practicable but not later than 270 days (or such longer period as the Administrator may establish for good cause shown) after the date of enactment of this Act; and

(B) the final programmatic environmental impact statement shall be prepared and published within 180 days (or such longer period as the Administrator may establish for good cause shown) after the date on which the draft statement is published.

(d) ENVIRONMENTAL IMPACT STATEMENTS ON ISSUANCE OF LICENSES AND PERMITS.—The issuance of, but not the certification of an application for, any license or permit under this title shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969. In preparing an environmental impact statement pursuant to this subsection, the Administrator shall consult with the agency heads referred to in subsection (b) and shall take into account, and give due consideration to, the relevant information contained in any applicable studies and any other environmental impact statement prepared pursuant to this section. Each draft environmental impact statement prepared pursuant to this subsection shall be published, with the terms, conditions, and restrictions proposed pursuant to section 105(b), within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the application for the license or permit concerned is certified by the Administrator. Each final environmental impact statement shall be published 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the draft environmental impact statement is published.

(e) EFFECT ON OTHER LAW.—For the purposes of this Act, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be "a vessel or other floating craft" under section 502(12)(B) of the Clean Water Act and any dis-

charge of a pollutant from such vessel or other floating craft shall be subject to the Clean Water Act.

(f) STABLE REFERENCE AREAS.—

(1) Within one year after the enactment of this Act the Secretary of State shall, in cooperation with the Administrator and as part of the international consultations pursuant to subsection 118(f), negotiate with all nations that are identified in such subsection for the purpose of establishing international stable reference areas in which no mining shall take place: *Provided, however,* That this subsection shall not be construed as requiring any substantial withdrawal of deep seabed areas from deep seabed mining authorized by this Act.

(2) Nothing in this Act shall be construed as authorizing the United States to unilaterally establish such reference area or areas nor shall the United States recognize the unilateral claim to such reference area or areas by any State.

(3) Within four years after the enactment of this Act, the Secretary of State shall submit a report to Congress on the progress of establishing such stable reference areas, including the designation of appropriate zones to insure a representative and stable biota of the deep seabed.

(4) For purposes of this section "stable reference areas" shall mean an area or areas of the deep seabed to be used as a reference zone or zones for purposes of resource evaluation and environmental assessment of deep seabed mining in which no mining will occur.

SEC. 110. CONSERVATION OF NATURAL RESOURCES.

For the purpose of conservation of natural resources, each license and permit issued under this title shall contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license or permit applies. In establishing these terms, conditions, and restrictions, the Administrator shall consider the state of the technology, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration or commercial recovery activities, economic and resource data, and the national need for hard mineral resources. As used in this Act, the term "conservation of natural resources" is not intended to grant, imply, or create any inference of production controls or price regulation, in particular those which would affect the volume of production, prices, profits, markets, or the decision of which minerals or metals are to be recovered, except as such efforts may be incidental to actions taken pursuant to this section.

SEC. 111. PREVENTION OF INTERFERENCE WITH OTHER USES OF THE HIGH SEAS.

Each license and permit issued under this title shall include such restrictions as may be necessary and appropriate to ensure that exploration or commercial recovery activities conducted by the licensee or permittee do not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

SEC. 112. SAFETY OF LIFE AND PROPERTY AT SEA.

(a) CONDITIONS REGARDING VESSELS.—The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, shall require in any license or permit issued under this title, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license or permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning, and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea.

(b) APPLICABILITY OF OTHER LAWS.—Nothwithstanding any other provision of law, any vessel described in subsection (a) shall be subject to the provisions of the International Voyage Load Line Act of 1973, and to the provisions of titles 52 and 53 of the Revised Statutes and all Acts amendatory thereof or supplementary thereto.

SEC. 113. RECORDS, AUDITS, AND PUBLIC DISCLOSURE.

(a) RECORDS AND AUDITS.—(1) Each licensee and permittee shall keep such records, consistent with standard accounting principles, as the Administrator shall by regulation prescribe. Such records shall include information which will fully disclose expenditures for exploration and commercial recovery, including processing, of hard mineral resources, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (1).

(b) SUBMISSION OF DATA AND INFORMATION.—Each licensee and permittee shall be required to submit to the Administrator such data or other information as the Administrator may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of any license or permit; compliance with the reporting requirement contained in section 309; and evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

(c) PUBLIC DISCLOSURE.—Copies of any document, report, communication, or other record maintained or received by the Administrator containing data or information required under this title shall be made available to any person upon any request which (1) reasonably describes such record and (2) is made in accordance with rules adopted by the Administrator stating the time, place, fees (if any, not to exceed the direct cost of the services rendered), and procedures to be followed, except that neither the Administrator nor any other officer or employee of the United States may disclose any data or information knowingly and willingly required under this title the disclosure of which is prohibited by section 1905 of title 18, United States Code. Any officer or employee of the United States who discloses data or information in violation of this subsection shall be subject to the penalties set forth in section 303(b) of this Act.

SEC. 114. MONITORING OF ACTIVITIES OF LICENSEES AND PERMITTEES.

Each license and permit issued under this title shall require the licensee or permittee—

(1) to allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee or permittee in exploration or commercial recovery activities (A) to monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license or permit, and (B) to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor the environmental effects of the exploration and commercial recovery activities in accordance with guidelines issued by the Administrator and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

SEC. 115. RELINQUISHMENT, SURRENDER, AND TRANSFER OF LICENSES AND PERMITS.

(a) RELINQUISHMENT AND SURRENDER.—Any licensee or permittee may at any time, without penalty—

(1) surrender to the Administrator a license or a permit issued to the licensee or permittee; or

(2) relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

Any licensee or permittee who surrenders a license or permit, or relinquishes any such right, shall remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under such license or permit.

(b) TRANSFER.—Any license or permit, upon written request of the licensee or permittee, may be transferred by the Administrator; except that no such transfer may occur unless the proposed transferee is a United States citizen and until the Administrator determines that (1) the proposed transfer is in the public interest, and (2) the proposed transferee and the exploration or commercial recovery activities the transferee proposes to conduct meet the requirements of this Act and regulations issued under this Act.

SEC. 116. PUBLIC NOTICE AND HEARINGS.

(a) REQUIRED PROCEDURES.—The Administrator may issue regulations to carry out this Act, establish and significantly modify terms, conditions, and restrictions in licenses and permits issued under this title, and issue or transfer licenses and permits under this title, only after public notice and opportunity for comment and hearings in accordance with the following:

(1) The Administrator shall publish in the Federal Register notice of all applications for licenses and permits, all proposals

to issue or transfer licenses and permits, all regulations implementing this Act, and terms, conditions, and restrictions on licenses and permits, and all proposals to significantly modify licenses and permits. Interested persons shall be permitted to examine the materials relevant to any of these actions, and shall have at least 60 days after publication of such notice to submit written comments to the Administrator.

(2) The Administrator shall hold a public hearing in an appropriate location and may employ such additional methods as the Administrator deems appropriate to inform interested persons about each action specified in paragraph (1) and to invite their comments thereon.

(b) ADJUDICATORY HEARING.—If the Administrator determines that there exists one or more specific and material factual issues which require resolution by formal processes, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5, United States Code. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to take any action referred to in subsection (a). Hearings held pursuant to this section shall be consolidated insofar as practicable with hearings held by other agencies.

SEC. 117. CIVIL ACTIONS.

(a) EQUITABLE RELIEF.—Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on that person's behalf in the United States District Court for the District of Columbia—

(1) against any person who is alleged to be in violation of any provision of this Act or any condition of a license or permit issued under this title; or

(2) against the Administrator when there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary,

if the person bringing the action has a valid legal interst which is or may be adversely affected by such alleged violation or failure to perform. In suits brought under this subsection, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the provisions of this Act, or any term, condition, or restriction of a license or permit issued under this title, or to order the Administration to perform such act or duty.

(b) NOTICE.—No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to the alleged violation in a court of the United States; except that in any such civil action, any person having a valid legal interest which is or may be adversely affected by the alleged violation may intervene; or

(2) under subsection (a)(2) of this section, prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines that such an award is appropriate.

(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall restrict the rights which any person or class of persons may have under other law to seek enforcement or to seek any other relief. All vessel safety and environmental requirements of or under this Act shall be in addition to other requirements of law.

SEC. 118. RECIPROCATING STATES.

(a) DESIGNATION.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, may designate any foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation—

(1) regulates the conduct of its citizens and other persons subject to its jurisdiction engaged in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in a manner compatible with that provided in this Act and the regulations issued under this act, which includes adequate measures for the protection of the environment, the conservation of natural resources, and the safety of life and property at sea, and includes effective enforcement provisions;

(2) recognizes licenses and permits issued under this title to the extent that such nation, under its laws, (A) prohibits any person from engaging in exploration or commercial recovery which conflicts with that authorized under any such license or permit and (B) complies with the date for issuance of licenses and the effective date for permits provided in section 102(c)(1)(D) of this Act;

(3) recognizes, under its procedures, priorities of right, consistent with those provided in this Act and the regulations issued under this Act, for applications for licenses for exploration or permits for commercial recovery, which applications are made either under its procedures or under this Act; and

(4) provides an interim legal framework for exploration and commercial recovery which does not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

(b) EFFECT OF DESIGNATION.—No license or permit shall be issued under this title permitting any exploration or commercial recovery which will conflict with any license, permit, or equivalent authorization issued by any foreign nation which is designated as a reciprocating state under subsection (a).

(c) NOTIFICATION.—Upon receipt of any application for a license or permit under this title, the Administrator shall immediately notify all reciprocating states of such application. The notification

shall include those portions of the exploration plan or recovery plan submitted with respect to the application, or a summary thereof, and any other appropriate information not required to be withheld from public disclosure by section 113(c).

(d) REVOCATION OF RECIPROCATING STATE STATUS.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall revoke the designation of a foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation no longer complies with the requirements of subsection (a). At the request of any holder of a license, permit, or equivalent authorization of such foreign nation, who obtained the license, permit, or equivalent authorization while such foreign nation was a reciprocating state, the Administrator, in consultation with the Secretary of State, may decide to recognize the license, permit, or equivalent authorization for purposes of subsection (b).

(e) AUTHORIZATION.—The President is authorized to negotiate agreements with foreign nations necessary to implement this section.

(f) INTERNATIONAL CONSULTATIONS.—The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall consult with foreign nations which enact, or are preparing to enact, domestic legislation establishing an interim legal framework for exploration and commercial recovery of hard mineral resources. Such consultations shall be carried out with a view to facilitating the designation of such nations as reciprocating states and, as necessary, the negotiation of agreements with foreign nations authorized by subsection (e). In addition, the Administrator shall provide such foreign nations with information on environmental impacts of exploration and commercial recovery activities, and shall provide any technical assistance requested in designing regulatory measures to protect the environment.

TITLE II—TRANSITION TO INTERNATIONAL AGREEMENT

SEC. 201. DECLARATION OF CONGRESSIONAL INTENT.

It is the intent of Congress—

(1) that any international agreement to which the United States becomes a party should, in addition to promoting other national oceans objectives—

(A) provide assured and nondiscriminatory access, under reasonable terms and conditions, to the hard mineral resources of the deep seabed for United States citizens, and

(B) provide security of tenure by recognizing the rights of United States citizens who have undertaken exploration or commercial recovery under title I before such agreement enters into force with respect to the United States to continue their operations under terms, conditions, and restrictions which do not impose significant new economic burdens upon such citizens with respect to such operations with the effect of preventing the continuation of such operations on a viable economic basis;

(2) that the extent to which any such international agreement conforms to the provisions of paragraph (1) should be determined by the totality of the provisions of such agreement, including, but not limited to, the practical implications for the security of investments of any discretionary powers granted to an international regulatory body, the structures and decision-making procedures of such body, the availability of impartial and effective procedures for the settlement of disputes, and any features that tend to discriminate against exploration and commercial recovery activities undertaken by United States citizens; and

(3) that this Act should be transitional pending—

(A) the adoption of an international agreement at the Third United Nations Conference on the Law of the Sea, and the entering into force of such agreement, or portions thereof, with respect to the United States, or

(B) if such adoption is not forthcoming, the negotiation of a multilateral or other treaty concerning the deep seabed, and the entering into force of such treaty with respect to the United States.

SEC. 202. EFFECT OF INTERNATIONAL AGREEMENT.

If an international agreement enters into force with respect to the United States, any provision of title I, this title, or title III, and any regulation issued under any such provision, which is not inconsistent with such international agreement shall continue in effect with respect to United States citizens. In the implementation of such international agreement the Administrator, in consultation with the Secretary of State, shall make every effort, to the maximum extent practicable consistent with the provisions of that agreement, to provide for the continued operation of exploration and commercial recovery activities undertaken by United States citizens prior to entry into force of the agreement. The Administrator shall submit to the Congress, within one year after the date of such entry into force, a report on the actions taken by the Administrator under this section, which report shall include, but not be limited to—

(1) a description of the status of deep seabed mining operations of United States citizens under the international agreement; and

(2) an assessment of whether United States citizens who were engaged in exploration or commercial recovery on the date such agreement entered into force have been permitted to continue their operations.

SEC. 203. PROTECTION OF INTERIM INVESTMENTS.

In order to further the objectives set forth in section 201, the Administrator, not more than one year after the date of enactment of this Act—

(1) shall submit to the Congress proposed legislation necessary for the United States to implement a system for the protection of interim investments that has been adopted as part of an international agreement and any resolution relating to such international agreement; or

(2) if a system for the protection of interim investments has not been so adopted, shall report to the Congress on the status of negotiations relating to the establishment of such a system.

SEC. 204. DISCLAIMER OF OBLIGATION TO PAY COMPENSATION.

Sections 201 and 202 of this Act do not create or express any legal or moral obligation on the part of the United States Government to compensate any person for any impairment of the value of that person's investment in any operation for exploration or commercial recovery under title I which might occur in connection with the entering into force of an international agreement with respect to the United States.

TITLE III—ENFORCEMENT AND MISCELLANEOUS PROVISIONS

SEC. 301. PROHIBITED ACTS.

It is unlawful for any person who is a United States citizen, or a foreign national on board a vessel documented or numbered under the laws of the United States, or subject to the jurisdiction of the United States under a reciprocating state agreement negotiated under section 118(e)—

(1) to violate any provision of this act, any regulation issued under this Act, or any term, condition, or restriction of any license or permit issued to such person under this Act;

(2) to engage in exploration or commercial recovery after the revocation, or during the period of suspension, of an applicable license or permit issued under this Act, to engage in a particular exploration or commercial recovery activity during the period such activity has been suspended under this Act, or to fail to modify a particular exploration or commercial recovery activity for which modification was required under this Act;

(3) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of this Act, as provided in sections 114 and 304, to board a vessel documented or numbered under the laws of the United States, or any vessel for which such boarding is authorized by a treaty or executive agreement, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this Act or any regulation, term, condition, or restriction referred to in paragraph (1);

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (3);

(5) to resist a lawful arrest for any act prohibited by this section;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any hard mineral resource recovered, processed, or retained in violation of this Act or any regulation, term, condition, or restriction referred to in paragraph (1); or

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of any other person subject to this section knowing that such other person has committed any act prohibited by this section.

SEC. 302. CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.—Any person subject to section 301 who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed any act prohibited by section 301 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Administrator by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, any history or prior offenses, good faith demonstrated in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.—Any person subject to section 301 against whom a civil penalty is assessed under subsection (a) may obtain review thereof in an appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which the particular violation was found and such penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence as provided in section 706(2)(E) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person subject to section 301 fails to pay a civil penalty assessed against such person after the penalty has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the civil penalty assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) COMPROMISE OR OTHER ACTION BY THE ADMINISTRATOR.—The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section unless an action brought under subsection (b) or (c) is pending in a court of the United States.

SEC. 303. CRIMINAL OFFENSES.

(a) OFFENSE.—A person subject to section 301 is guilty of an offense if such person willfully and knowingly commits any act prohibited by secton 301.

(b) PUNISHMENT.—Any offense described in paragraphs (1), (2), and (6) of section 301 is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraphs (3), (4), (5), and (7) of section 301 is punishable by a fine of not more than $75,000 or imprisonment for

not more than six months, or both. If, in the commission of any offense, the person suject to the jurisdiction of the United States uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any such Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than ten years, or both.

SEC. 304. ENFORCEMENT.

(a) RESPONSIBILITY.—Subject to the other provisions of this subsection, the Administrator shall enforce the provisions of this Act. The Secretary of the department in which the Coast Guard is operating shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this Act as are authorized under other provisions of law and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of the provisions of this Act. The Secretary of the department in which the Coast Guard is operating shall have the exclusive responsibility for enforcement measures which affect the safety of life and property at sea. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b). While providing such assistance, these officers and employees shall be under the control, authority, and supervision of the Coast Guard. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) POWERS OF AUTHORIZED OFFICERS.—To enforce this Act on board any vessel subject to the provisions of the Act, any officer who is authorized by the Administrator or by the Secretary of the department in which the Coast Guard is operating may—

(1) board and inspect any vessel which is subject to the provisions of this Act;

(2) search any such vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this Act;

(3) arrest any person subject to section 301 if the officer has reasonable cause to believe that the person has committed a criminal offense under section 303;

(4) seize any such vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act if such seizure is necessary to prevent evasion of the enforcement of this Act;

(5) seize any hard mineral resource recovered or processed in violation of any provision of this Act;

(6) seize any other evidence related to any violation of any provision of this Act;

(7) execute any warrant or other process issued by any court of competent jurisdiction; and

(8) exercise any other lawful authority.

(c) DEFINITION.—For purposes of this section, the term "provisions of this Act" or "provision of this Act" means (1) any provision of title I or II or this title, (2) any regulation issued under title I, title II, or this title, and (3) any term, condition, or restriction of any license or permit issued under title I.

(d) PROPRIETARY INFORMATION.—Proprietary and privileged information seized or maintained under this title concerning a person or vessel engaged in exploration or commercial recovery shall not be made available for general or public use or inspection. The Administrator and the Secretary of the department in which the Coast Guard is operating shall issue regulations to insure the confidentiality of privileged and proprietary information.

SEC. 305. LIABILITY OF VESSELS.

Any vessel documented or numbered under the laws of the United States (except a public vessel engaged in noncommercial activities) which is used in any violation of this Act, any regulation issued under this Act, or any term, condition, or restriction of any license or permit issued under title I shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof.

SEC. 306. CIVIL FORFEITURES.

(a) IN GENERAL.—Any vessel subject to the provisions of sections 304 and 305, including its gear, furniture, appurtences, stores, and cargo, which is used, in any manner, in connection with or as a result of the commission of any act prohibited by section 301 and any hard mineral resource which is recovered, processed, or retained, in any manner, in connection with or as a result of any such act, shall be subject to forfeiture to the United States. All or part of such vessel, and all such hard mineral resources, may be forfeited to the United States pursuant to a civil proceeding under this section. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a vessel or cargo for violation of the customs laws, and the disposition of the vessel, cargo, or proceeds from the sale thereof and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as such provisions of law are applicable and not inconsistent with this Act.

(b) JURISDICTION OF COURTS.—Any district court of the United States which has jurisdiction under section 307 shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d).

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(d) PROCEDURE.—Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 307 shall stay the execution of such process, or discharge any property seized pursuant to such process, upon the receipt of a satisfactory bond or other security from any person subject to section 301 claiming such property. Such bond or other security shall be conditioned upon such person (1) delivering such property to the appropriate court upon order thereof, without any impairment of its value; or (2) paying the monetary value of such property pursuant to any order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all hard mineral resources found on board a vessel subject to the provisions of sections 304 and 305 which is seized in connection with an act prohibited by section 301 were recovered, processed, or retained in violation of this Act.

SEC. 307. JURISDICTION OF COURTS.

The district of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. These courts may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

SEC. 308. REGULATIONS.

(a) PROPOSED REGULATIONS.—Not later than 270 days after the date of enactment of this Act, the Administrator shall solicit the views of the agency heads referred to in section 109(b) and of interested persons, and issue, in accordance with section 553 of title 5, United States Code, such proposed regulations as are required by or are necessary and appropriate to implement titles I and II and this title. The Administrator shall hold at least one public hearing on such proposed regulations.

(b) FINAL REGULATIONS.—Not later than 180 days after the date on which proposed regulations are issued pursuant to subsection (a), the Administrator shall solicit the views of the agency heads referred to in section 109(b) and of interested persons, consider the comments received during the public hearing required in subsection (a) and any written comments on the proposed regulations received by the Administrator, and issue, in accordance with section 553 of title 5, United States Code, such regulations as are required by or are necessary and appropriate to implement titles I and II and this title.

(c) AMENDMENTS.—The Administrator may at any time amend regulations issued pursuant to subsection (b) as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources within the meaning of section 110, protection of the environment, and the safety of life and property at sea. Such amended regulations shall apply to all explora-

tion or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this Act; except that any such amended regulations which provide for conservation of natural resources shall apply to exploration or commercial recovery conducted under an existing license or permit during the present term of such license or permit only if the Administrator determines that such amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this subsection shall be made on the record after an opportunity for an agency hearing.

(d) CONSISTENCY.—This Act and the regulations issued under this Act shall not be deemed to supersede any other Federal laws or treaties or regulations issued thereunder.

SEC. 309. BIENNIAL REPORT.

(a) SUBMISSION OF REPORTS.—The Administrator shall submit to the Congress—

(1) not later than December 31, 1981, a report on the administration of this Act during the period beginning on the date of enactment of this Act and ending September 30, 1981; and

(2) not later than December 31 of each second year thereafter, a report on the administration of this Act during the two fiscal years preceding the date on which the report is required to be filed.

(b) CONTENTS.—Each report filed pursuant to subsection (a) shall include, but not be limited to, the following information with respect to the reporting period:

(1) Licenses and permits issued, modified, revised, suspended, revoked, relinquished, surrendered, or transferred; denials of certifications of applications for the issuance or transfer of licenses and permits; denials or issuance or transfer of licenses and permits; and required suspensions and modifications of activities under licenses and permits.

(2) A description and evaluation of the exploration and commercial recovery activities undertaken, including, but not limited to, information setting forth the quantities of hard mineral resources recovered and the disposition of such resources.

(3) An assessment of the environmental impacts, including a description and estimate of any damage caused by any adverse effects on the quality of the environment resulting from such activities.

(4) The number and description of all civil and criminal proceedings, including citations, instituted under this title, and the current status of such proceedings.

(5) Such recommendations as the Administrator deems appropriate for amending this Act to further fulfill its purposes.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator, for purposes of carrying out the provisions of titles I and II and this title, such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982, and $1,469,000

for the fiscal year ending September 30, 1983, and $2,150,000 for the fiscal year ending September 30, 1984.[2]

SEC. 311. SEVERABILITY.

If any provision of this Act or any application thereof is held invalid, the validity of the remainder of the Act, or any other application, shall not be affected thereby.

TITLE IV—TAX

SEC. 401. SHORT TITLE.

This title may be cited as the "Deep Seabed Hard Mineral Removal Tax Act of 1979"

SEC. 402. IMPOSITION OF TAX ON REMOVAL OF HARD MINERAL RESOURCES FROM DEEP SEABED.

(a) GENERAL RULE.—Chapter 36 of the Internal Revenue Code of 1954 (relating to certain other excise taxes) is amended by adding at the end thereof the following new subchapter:

"Subchapter F—Tax on Removal of Hard Mineral Resources From Deep Seabed

"Sec. 4495. Imposition of tax.
"Sec. 4496. Definitions.
"Sec. 4497. Imputed value.
"Sec. 4498. Termination.

"SEC. 4495. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any removal of a hard mineral resource from the deep seabed pursuant to a deep seabed permit.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any removal shall be 3.75 percent of the imputed value of the resource so removed.

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the person to whom the deep seabed permit is issued.

"(d) TIME FOR PAYING TAX.—The time for paying the tax imposed by subsection (a) shall be the time prescribed by the Secretary by regulations. The time so prescribed with respect to any removal shall be not earlier than the earlier of—

"(1) the commercial use of, or the sale or disposition of, any portion of the resource so removed, or

"(2) the day which is 12 months after the date of the removal of the resource.

"SEC. 4496. DEFINITIONS.

"(a) DEEP SEABED PERMIT.—For purposes of this subchapter, the term 'deep seabed permit' means a permit issued under title I of the Deep Seabed Hard Minerals Resources Act.

"(b) HARD MINERAL RESOURCE.—For purposes of this subchapter, the term 'hard mineral resource' means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which contain one or more minerals, at least one of which is manganese, nickel, cobalt, or copper.

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[2] Public Law 97-416 (96 Stat. 2084), added the authorizations for fiscal years 1983 and 1984.

"(c) DEEP SEABED.—For purposes of this subchapter, the term 'deep seabed' means the seabed, and the subsoil thereof to a depth of 10 meters lying seaward of, and outside—

"(1) the Continental Shelf of any nation; and

"(2) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States.

"(d) CONTINENTAL SHELF.—For purposes of this subchapter, the term 'Continental Shelf' means—

"(1) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas; and

"(2) the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

"SEC. 4497. IMPUTED VALUE.

"(a) IN GENERAL.—For purposes of this subchapter, the term 'imputed value' means, with respect to any hard mineral resources, 20 percent of the fair market value of the commercially recoverable metals and minerals contained in such resource. Such fair market value shall be determined—

"(1) as of the date of the removal of the hard mineral resource from the deep seabed; and

"(2) as if the metals and minerals contained in such resource were separated from such resource and were in the most basis form for which there is a readily ascertainable market price.

"(b) COMMERCIAL RECOVERABILITY.—

"(1) MANGANESE, NICKEL, COBALT, AND COPPER.—For purposes of subsection (a), manganese, nickel, cobalt, and copper shall be treated as commercially recoverable.

"(2) MINIMUM QUANTITIES AND PERCENTAGES.—The Secretary may by regulations prescribe for each metal or mineral quantities or percentages below which the metal or mineral shall be treated as not commercially recoverable.

"(c) SUSPENSION OF TAX WITH RESPECT TO CERTAIN METALS AND MINERALS HELD FOR LATER PROCESSING.—

"(1) ELECTION.—The permittee may, in such manner and at such time as may be prescribed by regulations, elect to have the application of the tax suspended with respect to one or more commercially recoverable metals or minerals in the resource which the permittee does not intend to process within one year of the date of extraction. Any metal or mineral affected by such election shall not be taken into account in determining the imputed value of the resource at the time of its removal from the deep seabed. Any suspension under this paragraph with respect to a metal or mineral shall be permanent unless there is a redetermination affecting such metal or mineral under paragraph (2).

"(2) LATER COMPUTATION OF TAX.—If the permittee processes any metal or mineral affected by the election under paragraph (1), or if he sells any portion of the resource containing such a

metal or mineral, then the amount of the tax under section 4495 shall be redetermined as if there had been no suspension under paragraph (1) with respect to such metal or mineral. In any such case there shall be added to the increase in tax determined under the preceding sentence an amount equal to the interest (at rates determined under section 6621) on such increase for the period from the date prescribed for paying the tax on the resources (determined under section 4495(d)) to the date of the processing or sale.

"(d) DETERMINATIONS OF VALUE.—All determinations of value necessary for the application of this subchapter shall be made by the Secretary (after consultation with other appropriate Federal officials) on the basis of the best available information. Such determinations shall be made under procedures established by the Secretary by regulations.

"SEC. 4498. TERMINATION.

"(a) GENERAL RULE.—The tax imposed by section 4495 shall not apply to any removal from the deep seabed after the earlier of—

"(1) the date on which an international deep seabed treaty takes effect with respect to the United States, or

"(2) the date 10 years after the date of the enactment of this subchapter.

"(b) INTERNATIONAL DEEP SEABED TREATY.—For purposes of subsection (a), the term 'international deep seabed treaty' means any treaty which—

"(1) is adopted by a United Nations Conference on the Law of the Sea, and

"(2) requires contributions to an international fund for the sharing of revenues from deep seabed mining.".

(b) CLERICAL AMENDMENTS.—The table of subchapters for chapter 36 of such Code is amended by adding at the end thereof the following new item:

"SUBCHAPTER F. Tax on removal of hard mineral resources from deep seabed."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1980.

SEC. 403. ESTABLISHMENT OF DEEP SEABED REVENUE SHARING TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Deep Seabed Revenue Sharing Trust Fund" (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

(1) IN GENERAL.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury to be equivalent to the amounts of the taxes received in the Treasury under section 4495 of the Internal Revenue Code of 1954.

(2) METHOD OF TRANSFER.—The amounts appropriated by paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amount required to be transferred.

(c) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and to report to the Congress for the fiscal year ending September 30, 1980, and each fiscal year thereafter on the financial condition and the results of the operations of the Trust Fund during the preceding year and on its expected condition and operations during the fiscal year and the next five fiscal years after the fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—

(A) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund may be sold by the Secretary at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) EXPENDITURES FROM TRUST FUND.—If an international deep seabed treaty is ratified by and in effect with respect to the United States on or before the date ten years after the date of the enactment of this Act, amounts in the Trust Fund shall be available, as provided by appropriations Acts, for making contributions required under such treaty for purposes of the sharing among nations of the revenues from deep seabed mining. Nothing in this subsection shall be deemed to authorize any program or other activity not otherwise authorized by law.

(e) USE OF FUNDS.—If an international deep seabed treaty is not in effect with respect to the United States on or before the date ten years after the date of the enactment of this Act, amounts in the Trust Fund shall be available for such purposes as Congress may hereafter provide by law.

(f) INTERNATIONAL DEEP SEABED TREATY.—For purposes of this section, the term "international deep seabed treaty" has the meaning given to such term by section 4498(b) of the Internal Revenue Code of 1954.

SEC. 404. ACT NOT TO AFFECT TAX OR CUSTOMS OR TARIFF TREATMENT OF DEEP SEABED MINING.

Except as otherwise provided in section 402, nothing in this Act shall affect the application of the Internal Revenue Code of 1954. Nothing in this Act shall affect the application of the customs or tariff laws of the United States.

2. Oil Pollution

a. Oil Pollution Act, 1961, as amended

Public Law 87-167 [S. 2187], 75 Stat. 402; 33 U.S.C. 1001-1015, approved August 30, 1961, as amended by Public Law 89-551 [H.R. 8760], 80 Stat. 372, approved September 1, 1966; and by Public Law 93-119 [H.R. 5451], 87 Stat. 424, approved October 4, 1973

AN ACT To implement the provisions of the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954.[1]

NOTE.—This Act will be repealed on the effective date of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol). It will be replaced with the Act to Prevent Pollution from Ships (Public Law 96-478; 94 Stat. 2297). The MARPOL Protocol will become effective one year after 15 nations have deposited their instruments of ratification. As of publication date of this volume, only 11 nations, including the United States, had deposited such instruments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, to implement the provision of the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended, may be cited as the "Oil Pollution Act, 1961, as amended".

Sec. 2. DEFINITIONS.—As used in this Act, unless the context otherwise requires—

(a) The term "convention" means the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended;

(b) The term "discharge" in relation to oil or to an oily mixture means any discharge or escape howsoever caused;

(c)[2] The term "instantaneous rate of discharge of oil content" means the rate of discharge of oil in liters per hour at any instant divided by the speed of the ship in knots at the same instant;

(d) The term "heavy diesel oil" means diesel oil, other than those distillates of which more than 50 per centum, by volume distills at a temperature not exceeding three hundred and forty degrees centigrade when tested by American Society for Testing and Materials standard method D. 86/59;

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[1] 12 UST 2989; TIAS 4900; 327 UNTS 3. See boxnote on page 739.

[2] Subsec. (c) was added by sec. 12(1)(C) of Public Law 93-119 (87 Stat. 424).

(e) The term "mile" means a nautical mile of six thousand and eighty feet or one thousand eight hundred and fifty-two meters;

(f)[3] The term "oil" means crude oil, fuel oil, heavy diesel oil, and lubricating oil, and "oily" shall be construed accordingly; and "oily mixture" means a mixture with any oil content;

(g) The term "person" means an individual, partnership, corporation, or association; and any owner, operator, agent, master, officer, or employee of a ship;

(h)[4] The term "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(i)[5] The term "ships", subject to the exceptions provided in paragraph (1) of this subsection, means any seagoing vessel of any type whatsoever of American registry or nationality, including floating craft, whether self-propelled or towed by another vessel making a sea voyage; and "tanker", as a type included within the term "ship", means a ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of this cargo space.

(1) The following categories of vessels are excepted from all provisions of the Act:

(i) tankers of under one hundred and fifty tons gross tonnage and other ships of under five hundred tons gross tonnage.

(ii) ships for the time being engaged in the whaling industry when actually employed on whaling operations.

(iii) ships for the time being navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of Saint Lambert lock at Montreal in the Province of Quebec, Canada.

(iv) naval ships and ships for the time being used as naval auxiliaries.

(j)[6] The term "from the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958 except that, for the purpose of this Act "from the nearest land" off the northeastern coast of Australia means a line drawn from a point on the coast of Australia in latitude 11 degrees south, longitude 142 degrees 08 minutes east to a point in latitude 10 degrees 35 minutes south, longitude 141 degrees 55 minutes east—

thence to a point latitude 10 degrees 00 minutes south, longitude 142 degrees 00 minutes east;

thence to a point latitude 9 degrees 10 minutes south, longitude 143 degrees 52 minutes east;

thence to a point latitude 9 degrees 00 minutes south, longitude 144 degrees 30 minutes east;

thence to a point latitude 13 degrees 00 minutes south, longitude 141 degrees 00 minutes east;

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[3] Subsec. (f) was amended and restated by sec. 1(2)(C) of Public Law 89-551 (80 Stat. 372).

[4] Subsec. (h) was amended and restated by sec. 2(1)(F) of Public Law 93-119 (87 Stat. 424).

[5] Subsec. (i) was amended and restated by Public Law 89-551 (80 Stat. 374).

[6] Subsec. (j), as added by Public Law 89-551, was amended and restated by sec. 2(1)(g) of Public Law 93-119 (87 Stat. 424).

thence to a point latitude 15 degrees 00 minutes south, longitude 146 degrees 00 minutes east;
thence to a point latitude 18 degrees 00 minutes south, longitude 147 degrees 00 minutes east;
thence to a point latitude 21 degrees 00 minutes south, longitude 153 degrees 00 minutes east;
thence to a point on the coast of Australia in latitude 24 degrees 42 minutes south, longitude 153 degrees 15 minutes east.

Sec. 3.[7] Subject to the provisions of sections 4 and 5, the discharge of oil or oily mixture from a ship is probibited unless—

(a) the ship is proceeding en route; and

(b) the instaneous rate of discharge of oil content does not exceed sixty liters per mile, and

(c)(1) for a ship, other than a tanker—

(i) the oil content of the discharge is less than one hundred parts per one million parts of the mixture, and

(ii) the discharge is made as far as practicable from the nearest land;

(2) for a tanker, except discharges from machinery space bilges which shall be governed by the above provisions for ships other than tankers—

(i) the total quantity of oil discharged on a ballast voyage does not exceed one fifteen-thousandths of the total cargo-carrying capacity, and

(ii) the tanker is more than fifty miles from the nearest land.

Sec. 4.[8] Section 3 shall not apply to—

(a) the discharge of oil or oily mixture from a ship for the purpose of securing the safety of a ship, preventing damage to a ship or cargo, or saving life at sea; or

(b) the escape of oil, or of oily mixture, resulting from damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape; or

(c) the discharge of residue arising from the purification or clarification of fuel oil or lubricating oil: *Provided,* That such discharge is made as far from land as practicable.

Sec. 5.[9] Section 3 does not apply to the discharge of tanker ballast from a cargo tank which, since the cargo was last carried therein, has been so cleaned that any effluent therefrom, if it were discharged from a stationary tanker into clean calm water on a clear day, would produce no visible traces of oil on the surface of the water.

Sec. 6.[10] (a) Every tanker to which this Act applies and built in the United States and for which the building contract is placed on or after the effective date of this section shall be constructed in ac-

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[7] Sec. 3 was amended and restated by sec. 2(2) of Public Law 93-119 (87 Stat. 425). Previously amended and restated by sec. 1(3) of Public Law 89-551.

[8] Sec. 4 was amended and restated by sec. 1(4) of Public Law 89-551.

[9] Sec. 5 was amended and restated by sec. 2(4) of Public Law 93-119 (87 Stat. 425). Previously amended and restated by Public Law 89-551.

[10] Sec. 6 was amended and restated by Public Law 93-119 (87 Stat. 426).

cordance with the provisions of annex C to the convention, relating to tank arrangement and limitation of tank size.

(b) Every tanker to which this Act applies and built in the United States and for which the building contract is placed, or in the absence of a building contract the keel of which is laid or which is at a similar state of construction, before the effective date of this section shall, within two years after that date, comply with the provision of annex C of the convention if—

(1) the delivery of the tanker is after January 1, 1977; or

(2) the delivery of the tanker is not later than January 1, 1977, and the building contract is placed after January 1, 1972, or in cases where no building contract has previously been placed, the keel is laid or the tanker is at a similar stage of construction, after June 30, 1972.

(c) A tanker required under this section to be constructed in accordance with annex C to the convention and so constructed shall carry on board a certificate issued by the Secretary attesting to that compliance. A tanker which is not required to be constructed in accordance with annex C to the convention shall carry on board a certificate to that effect issued by the Secretary, or if a tanker does comply with annex C though not required to do so, she may carry on board a certificate issued by the Secretary attesting to that compliance. Tankers under flag of the United States are prohibited from engaging in domestic or foreign trade without an appropriate certificate issued under this section.

(d) Certificates issued to foreign tankers pursuant to the convention by other nations party thereto shall be accepted by the Secretary as of the same force as certificates issued by him. If the Secretary has clear grounds for believing that a foreign tanker required under the convention to be constructed in accordance with annex C entering ports of the United States or using offshore terminals under United States control does not in fact comply with annex C, he may request the Secretary of State to seek consultation with the government with which the tanker is registered. If after consultation or otherwise, the Secretary is satisfied that such tanker does not comply with annex C, he may for this reason deny such tanker access to ports of the United States or to offshore terminals under United States control until such time as he is satisfied that the tanker has been brought into compliance.

(e) If the Secretary is satisfied that any other foreign tanker which, if registered in a country party to the convention, would be required to be constructed in accordance with annex C, does not in fact comply with the standards relating to tank arrangement and limitation of tank size of annex C, then he may deny such tanker access to ports of the United States or to offshore terminals under United States control.

Sec. 7.[11] (a) Any person who willfully discharges oil or oily mixture from a ship in violation of this Act or the regulations thereunder shall be fined not more than $10,000 for each violation or imprisoned not more than one year, or both.

(b) In addition to any other penalty prescribed by law any person who willfully or negligently discharges oil or oily mixture from a

[11] Sec. 7 was amended and restated by sec. 2(6) of Public Law 93-119 (87 Stat. 426).

ship in violation of this Act or any regulation thereunder shall be liable to a civil penalty of not more than $10,000 for each violation, and any person who otherwise violates this Act or any regulation thereunder shall be liable to a civil penalty of not more than $5,000 for each violation.

(c) A ship from which oil or oily mixture is discharged in violation of this Act or any regulation thereunder is liable for any pecuniary penalty under this section and may be proceeded against in the district court of any district in which the vessel may be found.

(d) The Secretary may assess any civil penalty incurred under this Act or any regulation thereunder and, in his discretion, remit, mitigate, or compromise any penalty. No penalty may be assessed unless the alleged violator shall have been given notice and the opportunity to be heard on the alleged violation. Upon any failure to pay a civil penalty assessed under this Act, the Secretary may request the Attorney General to institute a civil action to collect the penalty. In hearing such action, the district court shall have authority to review the violation and the assessment of the civil penalty de novo.

Sec. 8. The Coast Guard may, subject to the provisions of section 4450 of the Revised Statutes, as amended (46 U.S.C. 239), suspend or revoke a license issued to the master or other licensed officer of any ship found violating the provisons of this Act or the regulations issued pursuant thereto.

Sec. 9.[12] (a) In the administration of sections 1–12 of this Act, the Secretary may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities, or equipment of other Federal agencies or the States. For the better enforcement of the provisions of said sections, officers of the Coast Guard and other persons employed by or acting under the authority of the Secretary shall have power and authority and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions: *Provided,* That no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials: *And provided further,* That whenever any arrest is made under the provisions of said sections the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States. Representatives of the Secretary and of the Coast Guard of the United States may go on board and inspect any ship as may be necessary for enforcement of this Act.

(b) To implement article VII of the convention, ship fittings and equipment, and operating requirements thereof, shall be in accordance with regulations prescribed by the Secretary.

Sec. 10.[13] (a) The Secretary shall have printed separate oil record books, containing instructions and spaces for inserting infor-

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[12] Originally enacted as sec. 8; extensively amended by sec. 2(8) of Public Law 93–119 (87 Stat. 427).

[13] Sec. 10 was amended and restated by sec. 1(6) of Public Law 89–552 (80 Stat. 374). Public Law 93–119 at sec. 2(9) amended and restated sec. 10(c) and repealed subsec. (f).

mation in the form prescribed by the Convention, which shall be published in regulations prescribed by the Secretary.

(b) If subject to this Act, every ship using oil fuel and every tanker shall be provided, without charge, an oil record book which shall be carried on board. The provisions of section 140 of title 5, United States Code, shall not apply. The ownership of the booklet shall remain in the United States Government. This book shall be available for inspection as provided in this Act and for surrender to the United States Government pursuant to regulations of the Secretary.

(c) The oil record book shall be completed on each occasion, on a tank-to-tank basis, whenever any of the following operations take place in the ship:

(1) for tankers—

(i) loading of oil cargo;

(ii) transfer of oil cargo during voyage;

(iii) discharge of oil cargo;

(iv) ballasting of cargo tanks;

(v) cleaning of cargo tanks;

(vi) discharge of dirty ballast;

(vii) discharge of water from slop tanks;

(viii) disposal of residues;

(ix) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate logbook;

(2) for ships other than tankers—

(i) ballasting or cleaning of bunker fuel tanks;

(ii) discharge of dirty ballast or cleaning water from bunker fuel tanks;

(iii) disposal of residues;

(iv) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate logbook. In the event of such discharge or escape of oil or oily mixture as is referred to in section 4 of this Act, a statement shall be made in the oil record book of the circumstances of, and reason for, the discharge or escape.

(d) Each operation described in subsection 10(c) of the Act shall be fully recorded without delay in the oil record book so that all the entries in the book appropriate to that operation are completed. Each page of the book shall be signed by the officer or officers in charge of the operations concerned and, when the ship is manned, by the master of the ship.

(e) Oil record books shall be kept in such manner and for such length of time as set forth in the regulations prescribed by the Secretary.

Sec. 11.[14] The Secretary may make regulations for the administration of sections 3, 4, 5, 7, 9, and 10.

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[14] Sec. 11 was amended and restated by sec. 1(7) of Public Law 89-551 and by sec. 2(10) of Public Law 93-119 (87 Stat. 428).

Sec. 12. (a) The Secretary may make regulations empowering such persons as may be designated to go on board any ship to which the convention applies, while the ship is within the territorial jurisdiction of the United States, and to require production of any records required to be kept in accordance with the convention.

(b)[15] Should evidence be obtained that a ship registered in another country party to the convention has discharged oil in violation of the convention but outside the territorial sea of the United States, such evidence should be forwarded to the State Department for action in accordance with article X of the Convention.

Sec. 13. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Sec. 14. If a provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Sec. 15.[15] Nothing in this Act or in regulations issued hereunder shall be construed to modify or amend the provisions of section 311 of the Federal Water Pollution Control Act, as amended or of section 89 of title 14, United States Code.

[15] Sec. 15 was amended by Public Law 93-119 (87 Stat. 428).

b. Intervention on the High Seas Act

Public Law 93-248 [S. 1070], 88 Stat. 8; 33 U.S.C. 1471-1487, approved February 5, 1974, as amended by Public Law 97-164 [H.R. 4482], 96 Stat. 25 at 49, approved April 2, 1982

AN ACT To implement the International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969.[1]

NOTE.—This Act was substantially amended by Public Law 95-302 (92 Stat. 344) in order to bring U.S. law into compliance with the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil, 1973. Sec. 2 of Public Law 95-302 specified that these amendments would not take effect until the Protocol became effective as to the United States. While the United States deposited its instrument of ratification on September 7, 1978, by January 1, 1983, only 11 countries had deposited such instruments (15 necessary for entry-into-force) and therefore, the amendments are not included in the text of this Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intervention on the High Seas Act".

Sec. 2. As used in this Act—

(1) "ship" means—

(A) any seagoing vessel of any type whatsoever, and

(B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

(2) "oil" means crude oil, fuel oil, diesel oil, and lubricating oil;

(3) "convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

(4) "Secretary" means the Secretary of the department in which the Coast Guard is operating; and

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Sec. 3. Whenever a ship collision, stranding, or other incident of navigation or other occurrence on board a ship or external to it re-

[1] See boxnote page 739.

sulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 10, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the Convention and this Act, to prevent, mitigate, or eliminate that danger.

Sec. 4. In determining whether there is grave and imminent danger of major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States, directly threatened or affected including but not limited to, fish, shellfish, and other living marine resources, wildlife, coastal zone, and estuarine activities, and public and private shorelines and beaches.

Sec. 5. Upon a determination under section 3 of this Act of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

Sec. 6. Before taking any measure under section 5 of this Act, the Secretary shall—

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag country of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

Sec. 7. In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 6 of this Act or without the continuation of consultations already begun.

Sec. 8. (a) Measures directed or conducted under this Act shall be proportionate to the damage, actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are proportionate to the damage the Secretary shall, among other things, consider—

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(1) the extent and probability of imminent damage if those measures are not taken;

(2) the likelihood of effectiveness of those measures; and

(3) the extent of the damage which may be caused by those measures.

Sec. 9. In the direction and conduct of measures under this Act the Secretary shall use his best endeavors to—

(1) assure the avoidance of risk to human life;

(2) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and

(3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

Sec. 10. (a) The United States shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in section 3.

(b) Actions against the United States seeking compensation for any excessive measures may be brought in the United States Claims Court,[2] in any district court of the United States, and in those courts enumerated in section 460 of title 28, United States Code. For purposes of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

Sec. 11. The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative Organization, and persons affected by measures taken under this Act.

Sec. 12. (a) Any person who—

(1) willfully violates a provision of this Act or a regulation issued thereunder; or

(2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this Act; or

(3) willfully obstructs any person who is acting in compliance with an order or direction under this Act, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(b) In a criminal proceeding for an offense under paragraph (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction or that he had reasonable cause to believe that compliance would have resulted in serious risk to human life.

Sec. 13. (a) The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in article III of the Convention.

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[2] Reference to the United States Claims Court was substituted in lieu of a reference to the United States Court of Claims by sec. 161(6) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49).

(b) The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the convention and the annexes thereto.

Sec. 14. No measures may be taken under authority of this Act against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service.

Sec. 15. This Act shall be interpreted and administered in a manner consistent with the convention and other international law. Except as specifically provided, nothing in this Act may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable.

Sec. 16. The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this Act.

Sec. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.

Sec. 18. This Act shall be effective upon the date of enactment, or upon the date the convention becomes effective as to the United States, whichever is later.

c. Deepwater Port Act of 1974

Partial text of Public Law 93–627 [H.R. 10701], 88 Stat. 2126; 33 U.S.C. 1501–1524, approved January 3, 1975

AN ACT To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act of 1974".

DECLARATION OF POLICY

Sec. 2. (a) It is declared to be the purposes of the Congress in this Act to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

Sec. 3. As used in this Act, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(a)(2) of this Act;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2)(A) or (B);

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and sections 73 and 74 of the Act of August 27, 1894, as amended;

(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such licensee; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordening on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 23. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a "new source" for pur-

poses of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

(11) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

(12) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

(13) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(14) "oil" means petroleum, crude oil, and any substance refined form petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(17) "Secretary" means the Secretary of Transportation;

(18) "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; and

(19) "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

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MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

Sec. 10. (a) Subject to recognized principles of international law, the Secretary shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense,

the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto.

INTERNATIONAL AGREEMENTS

Sec. 11. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

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RELATIONSHIP TO OTHER LAWS

Sec. 19. (a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if ex-

tended beyond 3 miles, would encompass the site of the deepwater port.

(c) Except in a situation involving force majeure, a license of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(d) The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this Act, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(e) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose.

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) is amended by deleting the words "as of the effective date of this Act" in the first sentence thereof and inserting in lieu thereof the words ", now in effect or hereafter adopted, amended, or repealed".

ANNUAL REPORT BY SECRETARY TO CONGRESS

Sec. 20. Within 6 months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of the Deepwater Port Act during such fiscal year, including all deepwater port development activities; (2) a summary of management, supervision, and enforcement activities; and (3) recommendations to the Congress for such additional legislative authority as may be necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities.

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NEGOTIATIONS WITH CANADA AND MEXICO

Sec. 22. The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

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3. North Pacific Fisheries Act of 1954, as amended

Public Law 83–579 [S. 3713], 68 Stat. 698; 16 U.S.C. 1022–1035, approved August 12, 1954, as amended by Public Law 85–114 [S. 2212], 71 Stat. 310, approved July 24, 1957; Public Law 92–471 [H.R. 9501], 86 Stat. 784, approved October 9, 1972; Public Law 95–326 [H.R. 12637], 92 Stat. 399, approved July 28, 1978; Public Law 95–553 [S. 3551], 92 Stat. 2072, approved October 30, 1978; and by Public Law 97–389 [H.R. 3942], 96 Stat. 1949, approved December 29, 1982

AN ACT To give effect to the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, May 9, 1952,[1] and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "North Pacific Fisheries Act of 1954".

Sec. 2. As used in this Act, the term—

(a)[2] "Convention" means the International Convention for the High Seas Fisheries of the North Pacific Ocean with a protocol and annex relating thereto signed at Tokyo, May 9, 1952, as amended by the Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, April 25, 1978.

(b) "Commission" means the International North Pacific Fisheries Commission provided for by article II of the Convention.

(c) "United States Section" means the United States Commissioners to the Commission.

(d) "Convention area" means all waters, other than territorial waters, of the North Pacific Ocean which for the purposes of this Act shall include the adjacent seas.

(e)[3] "Fishery conservation zone" means the fishery conservation zone of the United States established by section 101 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(f)[3] "Fishing vessel" means—

(1) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

(2) any vessel outfitted to engage in any activity described in paragraph (1); or

(3) any vessel in normal support of any vessel described in paragraph (1) or (2).

(g)[3] "Permit" means a permit issued by the Secretary of State in cooperation with the Secretary under section 13 of this Act.

(h)[3] "Secretary" means the Secretary of Commerce.

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[1] 4 UST 380; TIAS 2786; 205 UNTS 65. See boxnote on page 739.

[2] Subsec. (a) was amended and restated by sec. 1(1)(A) of Public Law 95–326 (92 Stat. 399). Former subsec. (a) made references to only the 1952 Convention.

[3] Sec. 1(1)(B) of Public Law 95–326 (92 Stat. 399) struck out subsec. (e) (defining "fishing vessel") and added new subsecs. (e) through (h).

Sec. 3.[4] (a)[5] The United States shall be represented on the Commission by not more than four United States Commissioners to be appointed by the President and serve at his pleasure. Each United States Commissioner shall be appointed for a term of office of not to exceed four years, but is eligible for reappointment. Any United States Commissioner may be appointed for a term of less than four years if such appointment is necessary to insure that the terms of office of not more than one Commissioner will expire in any one year. Of the Commissioners, who shall receive no compensation for their services as Commissioners—

(1) one shall be an official of the United States Government;

(2) two shall be residents of the State of Alaska; and

(3) one shall be a resident of the State of Washington.

An individual is not eligible for appointment under paragraph (2) or (3) as a Commissioner unless the individual is knowledgeable or experienced concerning the fisheries covered by the Convention.

(b) The Secretary of State, in consultation with the Secretary of Commerce, may designate from time to time Alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission or of the United States Section or of the Advisory Committee established pursuant to section 4, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

Sec. 4. (a)[6] The United States Section shall appoint an advisory committee of not less than six and not more than twenty-one members and shall fix the terms of office thereof. The members shall be appointed from among—

(1) individuals who are knowledgeable or experienced with respect to the fisheries covered by the Convention; and

(2) officers and employees of the fishery agencies of States the residents of which maintain a substantial fishery in the Convention area;

except that two-thirds of the membership of the committee shall consist of individuals, appointed under paragraphs (1) and (2), who are residents of Alaska.

(b) Any or all members of the advisory committee shall[7] attend all sessions of the Commission except executive sessions.

(c) The advisory committee shall be invited to all nonexecutive meetings of the United States Section and at such meetings shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section.

(d) The members of the advisory committee shall receive no compensation for their services as such members. On approval by the

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[4] Sec. 3 was amended and restated by sec. 108 of Public Law 92-471 (86 Stat. 784).

[5] Subsec. (a) was amended and restated by sec. 1(2)(A) of Public Law 95-326 (92 Stat. 399). Sec. 1(2)(B) of the same act provided that this amendment to subsec. (a) would become effective on Sept. 27, 1978.

[6] Subsec. (a) was amended and restated by sec. 1(3)(A) of Public Law 95-326 (92 Stat. 400).

[7] Public Law 92-471 deleted the word "may" and inserted "shall".

United States Section, not more than five members of the committee, designated by the committee, shall be paid for transportation expenses and per diem incident to attendance at meetings of the Commission or the United States Section; except that in the case in which—

(1) one member is so designated, such member shall be from among the members representing Alaska;

(2) two or three members are so designated, two members shall be from among those representing Alaska; and

(3) four or five members are so designated, three members shall be from among those representing Alaska.[8]

Sec. 5. [Repealed by Public Law 92-471 (86 Stat. 786).]

Sec. 6.[9] The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article III, section 1 of the Convention.

Sec. 7.[10] (a) The Secretary shall administer and, except to the extent otherwise provided for in this Act, enforce the provisions of the Convention, this Act, and regulations issued under this Act.

(b) In carrying out such functions, the Secretary—

(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating and the United States Section, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the government of any party to the Convention.

(c) The Secretary may adopt regulations which apply only to stocks of fish in the Convention area north of the parallel of north latitude of 48 degrees and 30 minutes, but such regulations shall not apply in the Convention area south of the 49th parallel of north latitude with respect to sockeye salmon (Oncorhynchus nerka) or pink salmon (Oncorhynchus gorbuscha).

Sec. 8.[11] Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

Sec. 9.[12] (a) This Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State

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[8] The words to this point beginning with "On approval by the United States Section . . ." were substituted in lieu of the second sentence in subsec. (d) by sec. 1(3)(B) of Public Law 95-326 (92 Stat. 400).

[9] Sec. 6 was amended and restated by sec. 1(4) of Public Law 95-326 (92 Stat. 400).

[10] Sec. 7, as added by sec. 101 of Public Law 92-471 (86 Stat. 784), was amended and restated by sec. 1(5) of Public Law 95-326 (92 Stat. 400).

[11] Formerly sec. 7 and redesignated as sec. 8 by Public Law 92-471 (86 Stat. 784).

[12] Sec. 9, as added by sec. 102 of Public Law 92-471 (86 Stat. 784), was amended and restated by sec. 1(6) of Public Law 95-326 (92 Stat. 400).

agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency which has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers (hereinafter in this Act referred to as "enforcement officers") to enforce the provisions of the Convention, this Act, and regulations adopted the permits issued under this Act: *Provided,* That any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) Enforcement officers may, within the fishery conservation zone—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 10;

(B) board, and search or inspect, any fishing vessel which is subject to the provisions of the Convention and this Act;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed, in the violation of any provision of the Convention, this Act, or any regulation adopted or permit issued under this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision referred to in subparagraph (C); and

(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions this Act.

(d)(1) Enforcement officers may in the Convention area outside the fishery conservation zone and similar zones of Canada and Japan—

(A) board any fishing vessel of Canada or Japan fishing for or processing anadromous species and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question persons, on board the vessel for the purpose of carrying out the provisions of the Convention, this Act, or any regulation adopted or permit issued under this Act; and

(B) if any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the enforcement officer, detain such vessel or person and further investigate the circumstances if necessary.

If an enforcement officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in sub-

paragraph (A), the officer shall further detain the vessel or person and deliver the vessel or person as promptly as practicable to the authorized officials of the appropriate nation.

(2) When requested by the appropriate authorities of Canada or Japan, as the case may be, an enforcement officer may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary, for the prosecution in Canada or Japan of any violation of the provisions of the Convention or any Canadian or Japanese law relating to the enforcement thereof.

Sec. 10.[13] It is unlawful for any person subject to the jurisdiction of the United States—

(1) to violate any provision of the Convention, this Act, or any regulation adopted or permit issued under this Act;

(2) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this Act, or any regulation or permit referred to in paragraph (1);

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest or detention for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of the Convention or this Act or any regulation adopted or permit issued under this Act;

(6) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such person has committed any act prohibited by this section.

Sec. 11.[14] (a)(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 10 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simulta-

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[13] Sec. 10, as added by Public Law 92-471, was amended and restated by sec. 1(7) of Public Law 95-326 (92 Stat. 402).

[14] Sec. 11, as amended by sec. 105 of Public Law 92-471, was amended and restated further by sec. 1(8) of Public Law 95-326 (92 Stat. 402).

neously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(b)(1) A person is guilty of an offense if he commits any act prohibited by section 10 (1), (3), (4), or (5).

(2) Any offense described in paragraph (1) is punishable by a fine of not more than $50,000, or imprisonment for not more than six months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than ten years, or both.

(c)(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 10 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(2) Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

(A) the disposition of forfeited property;

(B) the proceeds from the sale of forfeited property;

(C) the remission or mitigation of forfeitures; and

(D) the compromise of claims;

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commis-

sioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary of Commerce.

(4)(A) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 9(c) shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (I) delivering such property to the appropriate court upon order thereof, without any impairment of its value or (II) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 10 were taken or retained in violation of the Convention and this Act.

Sec. 12.[15] (a) There is hereby authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this Act, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners[16] without regard to the Standardized Government Travel Regulations, as amended, the

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[15] Sec. 1(9) of Public Law 95-326 (92 Stat. 404) repealed sec. 12 and redesignated sec. 13 as sec. 12.

[16] Public Law 92-247 added the words "or Alternate Commissioners". Secs. 201 and 202 of Public Law 92-247 read as follows:

"TITLE II—ALTERNATE COMMISSIONERS

"SEC. 201. In order to insure appropriate representation at meetings of international fisheries commissions, the Secretary of State, in consultation with the Secretary of Commerce or of the Interior as appropriate may designate from time to time Alternate United States Commissioners to the North Pacific Fur Seal Commission, the Inter-American Tropical Tuna Commission, the International Pacific Halibut Commission, the Great Lakes Fishery Commission, the International Whaling Commission, the Commission for the Conservation of Shrimp in the Eastern Gulf of Mexico, the International Commission for the Conservation of Atlantic Tunas, and any similar commission (other than the International Commission for the Northwest Atlantic Fisheries and the International North Pacific Fisheries Commission) established pursuant to a convention between the United States and other governments. Alternate United States Commissioners may exercise, at any meeting of the respective Commission or of the United States Section thereof, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present. In the event that there are Deputy United States Commissioners pursuant to the convention or statute, such Deputy United States Commmissioners shall have precedence over any Alternate Commissioners so designated pursuant to this title.

"SEC. 202. Alternate United States Commissioners shall receive no compensation for their services. They may be paid travel expenses and per diem in lieu of subsistence at the rates authorized by section 5703 of title 5, United States Code, when engaged in the performance of their duties."

Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b); and

(2) the United States share of the joint expenses of the Commission; provided that the Commissioners shall not, with respect to commitments concerning the United States share of the joint expenses of the Commission, be subject to the provisions of section 262(b) of title 22 of the United States Code insofar as they limit the authority of United States representatives to international organizations with respect to such commitments.

(b)[17] Such funds as shall be made available to the Secretary for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendation of the United States Section and to carry out other research and observer programs established pursuant to the Convention.

(c)[17] There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of section 14, such sums not to exceed $1,000,000 for fiscal year 1979 and for each of the next two fiscal years.

(d)[17] There are authorized to be appropriated to the Secretary, for purposes of carrying out a sonar censusing project in the Arctic-Yukon-Kuskokwim region of Alaska, not to exceed $500,000 during the period beginning October 1, 1978, and ending September 30, 1981.

Sec. 13.[18] (a) Each Canadian or Japanese fishing vessel which is authorized to fish in the fishery conservation zone pursuant to the Convention shall have on board a registration permit issued under subsection (b).

(b) The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each Canadian or Japanese fishing vessel which is authorized to fish within the fishery conservation zone pursuant to the Convention. Each such permit shall set forth the terms and conditions contained in the Convention that apply with respect to such operations, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall comply with any regulations adopted under section 14(a) of this Act and shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any enforcement officer. The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

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[17] Sec. 1(10) of Public Law 95-326 (92 Stat. 404) struck out subsec. (b) and added new subsecs. (b), (c), and (d). Sec. 2 of Public Law 95-326 provided that while all other amendments to this act became effective on July 28, 1978, the amendments made to sec. 12 (b), (c) and (d) shall be effective Oct. 1, 1978.

[18] Sec. 1 of Public Law 95-326 (92 Stat. 404) redesignated sec. 14 as sec. 16 and added new secs. 13, 14, and 15.

(c) Notwithstanding any other provision of law, Canadian and Japanese fishing vessels authorized to fish for anadromous species outside the fishery conservation zone pursuant to the Convention shall not be required to obtain any permit relating to such species.

Sec. 14.[19] (a)(1) The Secretary of Commerce is directed to take such actions as are necessary and appropriate to determine the effect of the Japanese salmon drift gillnet fishery on marine mammal populations, and to reduce or eliminate the incidental taking of marine mammals, particularly Dall's porpoise, by this fishery. Such actions shall include, but not be limited to—

(A) the placement of duly authorized observers of the United States onboard Japanese salmon fishing and research vessels while within the Fishery Conservation Zone, for the purpose of making scientific observations and studies relating to the biology of the Dall's porpoise and the incidental taking of marine mammals, seabirds, and king salmon of North American origin;

(B) the collection of a representative sample of biological material and data on all marine mammals incidentally taken in the fishery; and

(C) the adoption of requirements, by permit conditions or agreement, governing the incidental taking of marine mammals by Japanese salmon fishing vessels within the Fishery Conservation Zone, which will insure that new fishing gear or techniques, or both, are implemented in the North Pacific salmon fishery which will reduce porpoise mortality to the greatest extent practicable.

(2) The introduction of new fishing gear or techniques, or both, in the fishery under paragraph (1) of this subsection shall be accomplished no later than is specified in the following timetable:

(A) 25 per centum of the fleet by the commencement of the 1984 season;

(B) 50 per centum of the fleet by the commencement of the 1985 season;

(C) 75 per centum of the fleet by the commencement of the 1986 season; and

(D) 100 per centum of the fleet in order to be eligible for a new permit for the period after June 9, 1987.

The Secretary shall have the authority to decide, based upon available fishery research, which types of fishing gear or techniques offer the most practical and effective opportunity for reducing porpoise mortality, and to specify which of these fishing gear or techniques, or both, must be implemented during the time periods specified in subparagraphs (A) through (D) of this paragraph. In addition, the National Marine Fisheries Service may require the implementation of new gear types or fishing techniques, or both, on a faster schedule if the Service determines that faster implementation is technically and economically feasible.

(b) The General Permit issued under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) to the Federation of Japan Salmon Fisheries Cooperative Association on May 7, 1981

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[19] Sec. 14, as added by sec. 1 of Public Law 95-326 (92 Stat. 404) was amended and restated by sec. 201 of Public Law 97-389 (96 Stat. 1949).

(hereinafter referred to as the "General Permit"), is extended through June 9, 1987, unless earlier terminated by the Secretary pursuant to applicable law: *Provided,* That—

(1) all other provisions of the General Permit and applicable law shall remain in effect during that period;

(2) the Secretary shall by January 1 of each year during that period prepare and make available a report covering the results of the annual review required by condition B–2 of the General Permit and a proposed action plan for the forthcoming fishing season setting forth monitoring, research and development, and any other necessary actions to assure compliance with the General Permit, resolve questions about the status and trends of marine mammals affected by the Japanese high seas and land-based salmon gillnet fisheries, and reduce the annual incidental take of marine mammals in the Fishery Conservation Zone, and shall publish a notice of availability of the report in the Federal Register. The Secretary shall, by April 30 of each year during this period, prepare and make available a report covering a final action plan and shall publish a notice of availability of the report in the Federal Register.

(3) the Memorandum of Understanding between the Government of the United States of America and the Government of Japan dated June 3, 1981, relating to such incidental taking shall be modified or renegotiated by June 9, 1984, so as to apply to this extended period and to ensure the conduct of necessary monitoring and research and development efforts to implement the action plans described in paragraph (2) of this subsection.

(c) The taking of marine mammals incidental to fishing operations by Japanese salmon fishing vessels within the Fishery Conservation Zone shall be regulated in accordance with the General Permit, except that the Secretary shall take appropriate steps, including the suspension or modification of the General Permit, if the Secretary determines that the General Permit holder or certificate holders are not adhering to the conditions of the General Permit or to the conditions specified in paragraphs (a)(1)(C) and (a)(2) of this section and publishes such determination and its basis in the Federal Register.

(d) The terms and conditions under which the General Permit is issued may be modified by the Secretary in such manner as the Secretary determines to be consistent with and necessary to carry out the purposes of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and this Act.

(e) The Secretary shall ensure that any Memorandum of Understanding between the Government of Japan and the Government of the United States of America shall require no less of a commitment to marine mammal research and seabird research than that required by this section and the Memorandum of Understanding in effect on the date of enactment of the Fisheries Amendments Act of 1982.

(f)(1) In order to assure full implementation of the provisions of this section, the Secretary shall include as a condition of such General Permit and any Memorandum of Understanding that the Government of Japan or the permit holder, shall provide—

(A) appropriate funding each year to carry out fully a joint research program on Dall's porpoise and other marine mammals incidentally taken in the Japanese fishery; and

(B) a full report each year on the activities undertaken by the Government of Japan and the General Permit holder relating to marine mammal research and the progress toward the elimination of the incidental taking of marine mammals in the fishery.

(2) If the Secretary finds that such research cannot be successfully conducted because of a lack of adequate funding by the Government of Japan or the General Permit holder the Secretary shall immediately suspend the General Permit until such time as adequate funding is provided.

Sec. 15.[18] The Secretary, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating may administer this Act consistent with the terms of the Convention on a provisional basis pending the exchange by all the contracting parties of instruments of ratification or approval of the Protocol Amending the International Convention for High Seas Fisheries of the North Pacific Ocean, signed at Tokyo on April 25, 1978, in accordance with article II thereof.

Sec. 16.[18] If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

4. Tuna Conventions

a. Tuna Conventions Act of 1950, as amended

Public Law 81-764 [S. 2633], 64 Stat. 777; 16 U.S.C. 951-961, approved September 7, 1950, as amended by Public Law 87-814 [S. 2568], 76 Stat. 923, approved October 15, 1962; and by Public Law 92-471 [H.R. 9501], 86 Stat. 784, approved October 9, 1972

AN ACT To give effect to the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City January 25, 1949,[1] by the United States of America and the United Mexican States, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949,[2] by the United States of America and the Republic of Costa Rica, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuna Conventions Act of 1950".

Sec. 2. As used in this chapter, the term—

(a) "convention" includes (1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City, January 25, 1949, by the United States of America and the United Mexican States, (2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

(b) "commission" includes (1) the International Commission for the Scientific Investigation of Tuna, (2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

(c) "United States Commissioners" means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 3 of this Act;

(d) "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States; and

(e)[3] "United States" shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

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[1] Terminated Feb. 5, 1965.

[2] 1 UST 230; TIAS 2040; 80 UNTS 3. See boxnote on page 739.

[3] Public Law 87-814 substituted definition of "United States" for definition of "enforcement agency."

Sec. 3. The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and who is not a salaried employee of a State or of the Federal Government; and

(c) at least one shall be an officer of the United States Fish and Wildlife Service.

Sec. 4. The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.

Sec. 5. [Repealed by Public Law 92-471 (86 Stat. 784; 16 U.S.C. 954).]

Sec. 6. (a) The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the Secretary of the Interior,[4] to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

(b) Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the Secretary of the Interior,[4] shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

(c)[5] Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Con-

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[4] Public Law 87-814 substituted "Secretary of the Interior" for "head of the enforcement agency."

[5] Public Law 87-814, added subsec. (c).

vention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of the Interior upon approval of such recommedations by the Secretary of State and the Secretary of the Interior. The Secretary of the Interior shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (1) submission of written data, views, or arguments, and (2) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations. After publication in the Federal Register such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of the Interior shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission's recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of the Interior shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed; the limitation or prohibition of the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this Act; and such other measures incidental thereto as the Secretary of the Interior may deem necessary to implement the recommendations of the commission: *Provided,* That upon the promulgation of any such regulations the Secretary of the Interior shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit the entry into the United States from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area; and (2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and

which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of the Interior is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

Sec. 7.[6] Any person authorized to carry out enforcement activities under this Act and any person authorized by the commissions shall have power without warrant or other process, to inspect, at any reasonable time, catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished.

Sec. 8.[7] (a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this Act, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 4 of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of section 4 of this Act. In the case of

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[6] Public Law 87-814 substituted provisions respecting inspection of returns, records, or other reports for provisions authorizing a fine not exceeding $1,000 and proceeding for injunction against fishing for or possessing the kind of fish covered by the convention for failure to make, keep, furnish, or refusal to permit inspection of returns, records, or reports or for furnishing a false return, record, or report.

[7] Public Law 87-814 substituted provisions respecting violations, fines, and forfeitures and applications of related laws for provisions respecting enforcement of act.

any fish as described in this subsection offered for entry in the United States, the Secretary of the Interior shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 of this Act.

(d) Any person violating any provisions of subsection (a) of this section shall be fined not more than $25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than $50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than $1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than $5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than $100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

Sec. 9. (a) In order to provide coordination between the general annual programs of the commissions and programs of other agencies, relating to the exploration, development, and conservation of fishery resources, the Secretary of State may recommend to the United States Commissioners that they consider the relationship of the commissions' programs to those of such agenices and when necessary arrange, with the concurrence of such agencies for mutual cooperation between the commissions and such agencies for carrying out their respective programs.

(b) All agencies of the Federal Government are authorized on request of the commissions to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the commissions in the performance of their duties.

(c) The commissions are authorized and empowered to supply facilities and personnel to existing non-Federal agencies to expedite research work which in the judgment of the commissions is contributing or will contribute directly to the purposes of the conventions.

Sec. 10.[8] (a) The judges of the United States district courts and United States Commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and the regulations issued pursuant thereto.

(b) Enforcement of the provisions of this Act and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of the Interior, and the United States Bureau of Customs. In addition, the Secretary of the Interior may designate officers and employees of

[8] Sec. 10 was amended and restated by sec. 5 of Public Law 87-814 (76 Stat. 925).

the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes.

(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this Act or the regulations issued thereunder;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of the provisions of this Act or the regulations issued thereunder, then to arrest such person.

(e) Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this Act or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of the Interior.

(f) Notwithstanding the provisions of section 2464 of title 28 of the United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

Sec. 11. None of the prohibitions contained in this Act or in the laws and regulations of the States shall prevent the commissions from conducting or authorizing the conduct of fishing operations and biological experiments at any time for the purpose of scientific investigations as authorized by the conventions, or shall prevent the commissions from discharging any of its or their functions or duties prescribed by the conventions.

Sec. 12. There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of each convention and of this Act, including—

(a) contributions to each commission for the United States share of any joint expenses of the commission and the expenses of the United States Commissioners and their staff, including personal services in the District of Columbia and elsewhere;

(b) travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b);

(c) printing and binding without regard to section 11 of the Act of March 1, 1919 (U.S.C., title 44, sec. 111), or section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5);

(d) stenographic and other services by contract, if deemed necessary, without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5); and

(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels.

Sec. 13. If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

Sec. 14. This Act shall take effect with respect to each of the conventions upon the entry into force of that convention unless such entry into force shall be prior to the date of approval of this Act in which case this Act shall take effect immediately.

b. Atlantic Tunas Convention Act of 1975, as amended [1]

Public Law 94-70 [H.R. 5522], 89 Stat. 385, approved August 5, 1975; as amended by Public Law 94-265 [H.R. 200], 90 Stat. 331 at 361, approved April 13, 1976; Public Law 95-33 [H.R. 6205], 91 Stat. 173, approved May 26, 1977; and by Public Law 96-339 [S. 2549], 94 Stat. 1069, approved September 4, 1980

AN ACT To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966,[2] by the United States of America and other countries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Atlantic Tunas Convention Act of 1975".

DEFINITIONS

Sec. 2. For the purpose of this Act—

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4) The term "fisheries zone" means the waters included within a zone contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward drawn in such a manner that each point on it is two hundred [3] nautical miles from the baseline from which the territorial sea is measured;[4] or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

(5) The term "fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any actitivies in support thereof.

(6) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

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[1] 16 U.S.C. 971-971h.

[2] 20 UST 2887; see second boxnote page 739.

[3] Sec. 2 of Public Law 95-33 (91 Stat. 173) struck out "200" and inserted the words "two hundred".

[4] Sec. 405(a) of the Fishery Conservation and Management Act of 1976 (Public Law 94-265) substituted the words to this point beginning with "the waters included within a zone,". The language which was struck out read as follows: "the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094,".

(7) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(8) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(9) The term "Secretary" means the Secretary of Commerce.

(10) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

COMMISSIONERS

Sec. 3. (a) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section 4 of this Act, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

ADVISORY COMMITTEE

Sec. 4. There is established an advisory committee which shall be composed of—

(1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and

(2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(a)).

Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment.[5] Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners—

(A)[6] if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(B)[6] in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom subparagraph (A)[7] does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.

SECRETARY OF STATE TO ACT FOR THE UNITED STATES

Sec. 5. (a) The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what

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[5] Sec. 4 was amended and restated to this point by sec. 1(1)(C) of Public Law 96-339 (94 Stat. 1069). This amendment added to the membership of the advisory committee the chairmen of the various Fishery Management Councils.

[6] Sec. 1(1) of Public Law 96-339 (94 Stat. 1069) redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively.

[7] This reference to subpar. (A) was substituted in lieu of a reference to par. (1) by sec. 1(1) of Public Law 96-339 (94 Stat. 1069).

action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

(b) The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or fisheries zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country.

ADMINISTRATION

Sec. 6. (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any

State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Enforcement activities at sea under the provisions of this Act for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c)(1) Upon favorable action by the Secretary of State under section 5(a) of this Act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section; and

(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(d)(1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin

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tuna (Thunnus thynnus thynnus) which were proposed at the third regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of section 553 of title 5 of the United States Code, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

Sec. 7. (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6 (c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6 (c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 (c) or (d) of this Act.

(e)(1) Any person who—

(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than $25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than $50,000;

(B) violates any provision of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than $1,000, and for any subsequent violation of such subsection (b) and (c) shall be assessed a civil penalty of not more than $5,000; or

(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than $100,000.

(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause shown.

(3) No penalty shall be assessed under this subsection unless the person accused of committing any violation is given notice and opportunity for a hearing with respect to such violation.

(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States or any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(f) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) All provisions of law relating to the seizure, judicial forefeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

ENFORCEMENT

Sec. 8. (a) Any person authorized in accordance with the provisions of this Act to enforce a provision of this Act and the regulations issued thereunder may—

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch, if as a result of such inspection, he has reasonable cause

to believe that such vessel or any person on board is engaging in operations in violation of this Act or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this Act or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this Act or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshall or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

COOPERATION: COMMISSION'S FUNCTIONS NOT RESTRAINED BY THIS ACT OR STATE LAWS

Sec. 9. (a) The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

(b) All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) None of the prohibitions deriving from this Act, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d)(1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this Act to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this Act, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this Act, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this Act within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such regulations.

(e) To insure that the purposes of subsection (d) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) applies or may apply and the extent to which such laws and regulations are enforced.

APPROPRIATIONS

Sec. 10. There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal year 1976, the period beginning July 1, 1976, and ending September 30,

1976, and fiscal years 1977, 1978, 1979, 1980, 1981, 1982, and 1983[8] such sums as may be necessary for carrying out the purposes and provisions of this Act, including—

(1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.

SEPARABILITY

Sec. 11. If any provision of this Act or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

[8] Public Law 95-33 (91 Stat. 173) extended the authorization through fiscal year 1980. Sec. 1(2) of Public Law 96-339 (94 Stat. 1069) further extended the authorization through fiscal year 1983.

c. Atlantic Tunas Convention Act of 1975, Appropriation Authorization

Partial text of Public Law 96-339 [S. 2549], 94 Stat. 1069, approved September 4, 1980

AN ACT To authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ATLANTIC TUNAS CONVENTION ACT OF 1975.

* * * * * * *

SEC. 2.[1] OBSERVER PROGRAM REGARDING CERTAIN FOREIGN FISHING.

(a) DEFINITIONS.—As used in this section—

(1) The term "Act of 1976" means the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(2) The term "billfish" means any species of marlin, spearfish, sailfish or swordfish.

(3) The term "Secretary" means the Secretary of Commerce.

(b) OBSERVER PROGRAM.—The Secretary shall establish a program under which a United States observer will be stationed aboarded each foreign fishing vessel while that vessel—

(1) is in waters that are within—

(A) the fishery conservation zone established under section 101 of the Act of 1976, and

(B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

The Secretary may acquire observers for such program through contract with qualified private persons.

(c) FUNCTIONS OF OBSERVERS.—United States observers, while aboard foreign fishing vessels as required under subsection (b), shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

(d) FEES.—There is imposed for each year after 1980 on the owner or operator or each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a). The fees imposed under this

[1] 16 U.S.C. 1827.

subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e).

(e) FUND.—There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revoling fund for the purpose of carrying out this section. The Fund shall consist of the fees deposited into it as required under subsection (d). All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) PROHIBITED ACTS.—(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g);

(B) to refuse to pay the fee imposed under subsection (d) after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976.

(g) REGULATIONS.—The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

SEC. 3.[2] REPORTS REGARDING BLUEFIN TUNA.

The Secretary of Commerce shall prepare, for each biennial period commencing with the period covering calendar years 1981 and 1982, and submit to the Congress a report setting forth, with respect to such biennial period—

(1) the level of taking of bluefin tuna by United States fishermen in the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas;

(2) the status of bluefin tuna stocks within such Convention area and the trends in their population level; and

(3) related information resulting from the implementation of the observer program under section 2 of this Act.

The report required under this section shall be submitted to the Congress within sixty days after the close of the biennial period covered by the report. There are authorized to be appropriated such sums as may be necessary to carry out this section.

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[2] 16 U.S.C. 971i.

5. Whaling Convention Act of 1949 [1]

Public Law 81-676 [S. 2080], 64 Stat. 421; 16 U.S.C. 916-916(l), approved August 9, 1950

AN ACT To authorize the regulation of whaling and to give effect to the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946,[2] by the United States of America and certain other governments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. That this Act may be cited as the "Whaling Convention Act of 1949".

Sec. 2. When used in this Act—

(a) Convention: The word "Convention" means the International Convention for the Regulation of Whaling signed at Washington under the date of December 2, 1946, by the United States of America and certain other governments.

(b) Commission: The word "Commission" means the International Whaling Commission established by article III of the convention.

(c) United States Commissioner: The words "United States Commissioner" mean the member of the International Whaling Commission representing the United States of America appointed pursuant to article III of the convention and section 3 of this Act.

(d) Person: The word "person" denotes every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(e) Vessel: The word "vessel" denotes every kind, type, or description of water craft or contrivance subject to the jurisdiction of the United States used, or capable of being used, as a means of transportation.

(f) Factory ship: The words "factory ship" mean a vessel in which or on which whales are treated or processed, whether wholly or in part.

(g) Land station: The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

(h) Whale catcher: The words "whale catcher" mean a vessel used for the purpose of hunting, killing, taking, towing, holding onto, or scouting for whales.

(i) Whale products: The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

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[1] See also sec. 405 of the Department of State Authorization Act, FY 1980-81 (Public Law 96-60; 93 Stat. 403) which urged the International Whaling Commission to agree to a moratorium on the commercial killing of whales. The section also called upon specific countries to comply voluntarily with a moratorium. For complete text, see vol. I, page 621.

[2] 62 Stat. 1716; TIAS 1849; 4 Bevans 248; 161 UNTS 62. See boxnote page 739.

(j) Whaling: The word "whaling" means the scouting for, hunting, killing, taking, towing, holding onto, and flensing of whales, and the possession, treatment, or processing of whales or of whale products.

(k) Regulations of the Commission: The words "regulations of the Commission" mean the whaling regulations in the schedule annexed to and constituting a part of the convention in their original forms or as modified, revised, or amended by the Commission from time to time, in pursuance of article V of the convention.

(l) Regulations of the Secretary of the Interior: The words "regulations of the Secretary of the Interior" means such regulations as may be issued by the Secretary of the Interior, from time to time, in accordance with sections 11 and 12 of this Act.

Sec. 3. (a) The United States Commissioner shall be appointed by the President, on the concurrent recommendations of the Secretary of State and the Secretary of the Interior, and shall serve at the pleasure of the President.

(b) The President may appoint a Deputy United States Commissioner, on the concurrent recommendations of the Secretary of State and the Secretary of the Interior. The Deputy United States Commissioner shall serve at the pleasure of the President and shall be the principal technical adviser to the United States Commissioner, and shall be empowered to perform the duties of the Commissioner in case of the death, resignation, absence, or illness of the Commissioner.

(c) The United States Commissioner and Deputy Commissioner, although officers of the United States Government, shall receive no compensation for their services.

Sec. 4. The Secretary of State is authorized, with the concurrence of the Secretary of the Interior, to present or withdraw any objections on behalf of the United States Government to such regulations or amendments of the schedule to the convention as are adopted by the Commission and submitted to the United States Government in accordance with article V of the convention. The Secretary of State is further authorized to receive on behalf of the United States Government reports, requests, recommendations, and other communications of the Commission, and to act thereon either directly or by reference to the appropriate authority.

Sec. 5. (a) It shall be unlawful for any person subject to the jurisdiction of the United States (1) to engage in whaling in violation of the convention or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of the Interior; (2) to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or whale products taken or processed in violation of the convention, or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of the Interior; (3) to fail to make, keep, submit, or furnish any record or report required of him by the convention, or by any regulation of the Commission, or by any regulation of the Secretary of the Interior, or to refuse to permit any officer authorized to enforce the convention, the regulations of the Commission, this Act, and the regulations of the Secretary of the Interior, to inspect such record or report at any reasonable time.

(b) It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to do any act prohibited or to fail to do any act required by the convention, or by this Act, or by any regulation adopted by the Commission, or by any regulation of the Secretary of the Interior.

Sec. 6. (a) No person shall engage in whaling without first having obtained an appropriate license or scientific permit. Such licenses shall be issued by the Secretary of the Interior or such officer of the Department of the Interior as may be designated by him: *Provided,* That the Secretary, in his discretion and by appropriate regulation, may waive the payment of any license fee or the requirement that a license first be obtained, in connection with the salvage of any "Dauhval" or unclaimed dead whale found floating or stranded.

(b) The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable except under such conditions as may be prescribed by the Secretary:

(1) Land-station license for primary processing of whales, $250.

(2) Land-station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(3) Factory-ship license for primary processing of whales delivered by whaler catchers, $250.

(4) License for any vessel used exclusively for transporting whale products from a factory ship to a port during the whaling season, $100.

(5) Whale-catcher license, $100.

(c) All moneys derived from the issuance of whaling licenses shall be covered into the Treasury of the United States, and no license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

(d) Any person, in making application for a license to operate a whale catcher, must furnish evidence or affidavit satisfactory to the Secretary of the Interior that, in addition to conforming to other applicable laws and regulations, (1) the whale catcher is adequately equipped and competently manned to engage in whaling in accordance with the provisions of the convention, the regulations of the Commission, and the regulations of the Secretary of the Interior; (2) gunners and crews will be compensated on some basis that does not depend primarily on the number of whales taken; and (3) no bonus or other partial remuneration with relation to the number of whales taken shall be paid to gunners and crews in respect of the taking of any whales, the taking of which is prohibited.

(e) Any person, in making application for a license to operate a land station or a factory ship must furnish evidence or affidavits to the satisfaction of the Secretary of the Interior that, in addition to conforming to other applicable laws and regulations, such land station or factory ship is adequately equipped to comply with provisions of the convention, of the regulations of the Commission, and of the regulations of the Secretary of the Interior with respect to the processing of whales or the manufacture of whale products.

Sec. 7. Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the convention, or by any regulation of the Commission, or by this Act, or by a regulation of the Secretary of the Interior, or any person who furnishes a false return, record, or report, upon conviction, shall be subject to such fine as may be imposed by the court not to exceed $500, and shall in addition be prohibited from whaling, processing, or possessing whales, and whale products from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 8 of this Act shall not be invoked for failure to comply with requirements respecting returns, records, and reports.

Sec. 8. Except as to violations defined in clause 3 of subsection (a) of section (5) of this Act, any person violating any provision of the convention, or of any regulation of the Commission, or of this Act, or of any regulation of the Secretary of the Interior upon conviction, shall be fined not more than $10,000 or be imprisoned not more than one year, or both. In addition the court may prohibit such person from whaling for such period of time as it may determine, and may order forfeited, in whole or in part, the whales taken by such person in whaling during the season, or the whale products derived therefrom or the monetary value thereof. Such forfeited whales or whale products shall be disposed of in accordance with the direction of the court.

Sec. 9. (a) Any duly authorized enforcement officer or employee of the Fish and Wildlife Service of the Department of the Interior; any Coast Guard officer; any United States marshal or deputy United States marshal; any customs officer; and any other person authorized to enforce the provisions of the convention, the regulations of the Commission, this Act, and the regulations of the Secretary of the Interior, shall have power, without warrant or other process but subject to the provisions of the convention, to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of the convention or of this Act, or of the regulations of the Commission, or of the regulations of the Secretary of the Interior and to take such person immediately for examination before a justice or judge or any other official designated in section 3041 of title 18 of the United States Code; and shall have power, without warrant or other process, to search any vessel subject to the jurisdiction of the United States or land station when he has reasonable cause to believe that such vessel or land station is engaged in whaling in violation of the provisions of the convention or this Act, or the regulations of the Commission, or the regulations of the Secretary of the Interior. Any person authorized to enforce the provisions of the convention, this Act, the regulations of the Commission, or the regulations of the Secretary of the Interior shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this Act, and shall have power with a search warrant to search any vessel, person, or place at any time. The judges of the United States district courts and the United States

commissioners[3] may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to the provisions of the convention, any person authorized to enforce the convention, this Act, the regulations of the Commission, and the regulations of the Secretary of the Interior may seize, whenever and wherever lawfully found, all whales or whale products taken, processed, or possessed contrary to the provisions of the convention, of this Act, of the regulations of the Commission, or of the regulations of the Secretary of the Interior.

Any property so seized shall not be disposed of except pursuant to the order of a court of competent jurisdiction or the provisions of subsection (b) of this section, or, if perishable, in the manner prescribed by regulations of the Secretary of the Interior.

(b) Notwithstanding the provisions of section 2464 of title 28 of the United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation for double the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction, conditioned to deliver the property seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court.

Sec. 10. (a) In order to avoid duplication in scientific and other programs, the Secretary of State, with the concurrence of the agency, institution, or organization concerned, may direct the United States Commissioner to arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the convention.

(b) All agencies of the Federal Government are authorized, on request of the Commission, to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the Commission in the performance of its duties as prescribed by the convention.

Sec. 11. Nothing contained in this Act shall prevent the taking of whales and the conducting of biological experiments at any time for purposes of scientific investigation in accordance with scientific

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[3] References to United States commissioners to be deemed references to United States magistrates. See Public Law 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118 which provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under sec. 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under sec. 631 of Title 28: Judiciary and Judicial Procedure.

permits and regulations issued by the Secretary of the Interior or shall prevent the Commission from discharging its duties as prescribed by the convention.

Sec. 12. (a) The Secretary of the Interior is authorized and directed to administer and enforce all of the provisions of this Act and regulations issued pursuant thereto and all of the provisions of the convention and of the regulations of the Commission, except to the extent otherwise provided for in this Act, in the convention, or in the regulations of the Commission. In carrying out such functions he is authorized to adopt such regulations as may be necessary to carry out the purposes and objectives of the convention, the regulations of the Commission, this Act, and with the concurrence of the Secretary of State, to cooperate with the duly authorized officials of the government of any party to the convention.

(b) Enforcement activities under the provisions of this Act relating to vessels engaged in whaling and subject to the jurisdiction of the United States primarily shall be the responsibility of the Secretary of the Treasury in cooperation with the Secretary of the Interior.

(c) The Secretary of the Interior may authorize officers and employees of the coastal States of the United States to enforce the provisions of the convention, or of the regulations of the Commission, or of this Act, or of the regulations of the Secretary of the Interior. When so authorized such officers and employees may function as Federal law-enforcement officers for the purposes of this Act.

Sec. 13. Regulations of the Commission approved and effective in accordance with section 4 of this Act and article V of the convention shall be submitted for appropriate action or publication in the Federal Register by the Secretary of the Interior and shall become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations and the provisions of article V of the convention.

Sec. 14. There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of the convention and of this Act, including (1) contributions to the Commission for the United States share of any joint expenses of the Commission agreed by the United States and any of the other contracting governments, and (2) the expenses of the United States Commissioner and his staff, including (a) personal services in the District of Columbia and elsewhere, without regard to the civil-service laws and the Classification Act of 1923, as amended;[4] (b) travel expenses without regard to the Travel Expense Act of 1949[5] and section 73b of Title 5;[6] (c) transportation of things, communication services; (d) rent of offices; (e) printing and binding without regard to section 111 of Title 44,[7] and section 5 of Title 41; (f) steno-

[4] The Classification Act of 1923, as amended, referred to in the text, was repealed by the Classification Act of 1949, Oct. 28, 1949, ch. 782, title XII, § 1202, 63 Stat. 972. Section 1106 of such act provided that wherever reference was made to the Classification Act of 1923 it should be deemed a reference to the Classification Act of 1949. The Classification Act of 1949 is now covered by ch. 51 and subch. III of ch. 53 of title 5, Government Organization and Employees.

[5] The Travel Expense Act of 1949, referred to in the text, is now covered by sec. 5701 et seq. of title 5.

[6] Sec. 73b of title 5, referred to in the text, is now covered by sec. 5731 of title 5.

[7] Sec. 111 of title 44, referred to in the text, is now covered by sec. 501 of title 44: Public Printing and Documents.

graphic and other services by contract, if deemed necessary, without regard to section 5 of Title 41; (g) supplies and materials; (h) equipment; (i) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, and research vessels.

Sec. 15. If any provision of this Act or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

Sec. 16. The Whaling Treaty Act of May 1, 1936 (49 Stat. 1246; 16 U.S.C. 901–915), is hereby repealed and the Secretary of the Interior is authorized to refund any part of a license fee paid under said Act that is in excess of the license fee required under this Act.

6. Bilateral Inter-American Fishing Agreements With the United States

a. Brazil

Offshore Shrimp Fisheries Act of 1973

Public Law 93-242 [H.R. 8529], 87 Stat. 1061; 16 U.S.C. 1100b—1100b-10, approved January 2, 1974, as amended by Public Law 94-58 [H.R. 5709], 89 Stat. 266, approved July 24, 1975

AN ACT To implement the shrimp fishing agreement with Brazil,[1] and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Offshore Shrimp Fisheries Act of 1973".

NOTE.—All provisions of this Act except for Sec. 15 expired on September 30, 1977.

Sec. 15. Subsections (a) and (b) of section 5 of the Act of May 20, 1964 (78 Stat. 196), are amended to read as follows:

"(a) As used in this Act, the term 'Continental Shelf fishery resource' means living organisms belonging to sedimentary species; that is to say, organisms, which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil of the Continental Shelf, including the following species:

"CRUSTACEA

"Tanner Crab—Chionoecetes tanneri;
"Tanner Crab—Chionoecetes opiolio;
"Tanner Crab—Chionoecetes angulatus;
"Tanner Crab—Chionoecetes bairdi;
"King Crab—Paralithodes camtschatica;
"King Crab—Paralithodes platypus;
"King Crab—Paralithodes brevipes;
"Stone Crab—Menippe mercenaria;
"Lobster—Homarus Americanus;
"Dungeness Crab—Cancer magister;
"California King Crab—Paralithodes californiensis;
"Golden King Crab—Lithodes aequispinus;
"Northern Stone Crab—Lithodes maia;
"Stone Crab—Menippe mercenaria; and
"Deep-sea Red Crab—Ceryon quinquedens.

[1] TIAS 7603.

"MOLLUSKS

"Red Abalone—Haliotis rufescens;
"Pink Abalone—Haliotis corrugata;
"Japanese Abalone—Haliotis kamtschatkana;
"Queen Conch—Strombus gigas;
"Surf Clam—Spisula solidissima; and
"Ocean Quahog—Artica islandica.

"SPONGES

"Glove Sponge—Hippiospongia canaliculata;
"Sheepswool Sponge—Hippiospongia lachne;
"Grass Sponge—Spongia graminea;
"Yellow Sponge—Spongia barbera.

"(b) The Secretary of Commerce, in consultation with the Secretary of State, is authorized to publish in the Federal Register additional species of living organisms covered by the provisions of subsection (a) of this section."

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b. Canada

Sockeye Salmon or Pink Salmon Fishing Act of 1947, as amended [1]

Public Law 80–255 [H.R. 3767], 61 Stat. 511, approved July 29, 1947, as amended by Public Law 85–192 [S. 1806], 71 Stat. 293, approved July 11, 1967, and Public Law 92–504 [H.R. 16870], 86 Stat. 907, approved October 18, 1972

AN ACT To provide for the protection, preservation and extension of the sockeye salmon fishery of the Fraser River system, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sockeye Salmon or Pink Salmon [2] Fishing Act of 1947".

Sec. 2. When used in this chapter—

(a) Convention: The word "convention" means the convention between the United States of America and the Dominion of Canada for the protection, preservation, and extension of the sockeye salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May 1930,[3] as amended by the protocol to the convention, signed at Ottawa on the 28th day of December 1956.[4]

(b) Commission: The word "Commission" means the International Pacific Salmon Fisheries Commission provided for by article II of the convention.

(c) Person: The word "person" includes individuals, partnerships, associations, and corporations.

(d) Convention waters: The term "convention waters" means those waters described in article I of the convention.

(e)[5] Sockeye salmon and pink salmon: The term "sockeye salmon" means that species of salmon known by the scientific name Oncorhynchus nerka, and the term "pink salmon" means that species of salmon known by the scientific name Oncorhynchus gorbuscha.

(f) Vessel: The word "vessel" includes every type or description of water craft or other contrivance used, or capable of being used, as a means of transportation in water.

(g) Fishing: The word "fishing" means the fishing for, catching, or taking, or the attempted fishing for, catching, or taking of any sockeye salmon or pink salmon [2] in convention waters.

(h) Fishing gear: The term "fishing gear" means any net, trap, hook, or other device, appurtenance or equipment, of whatever

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[1] 16 U.S.C. 776–776f.

[2] Sec. 3 of Public Law 85–102 (71 Stat. 294) substituted the words "Sockeye Salmon or Pink Salmon" for "Sockeye Salmon" wherever it occurs in this public law.

[3] 50 Stat. 1355; TS 918; 6 Bevans 41; 185 UNTS 305. See boxnote on page 739.

[4] Sec. 1 of Public Law 85–102, substituted the word "fisheries" for "fishery" and inserted, "as amended by the protocol to the convention, signed at Ottawa on the 28th day of December 1956".

[5] Sec. 2 of Public Law 85–102, added definition of "pink salmon."

kind or description, used or capable of being used, for the purpose of capturing fish or as an aid in capturing fish.

Sec. 3. (a) It shall be unlawful for any person to engage in fishing for sockeye salmon or pink salmon [2] in convention waters in violation of the convention or of this Act or of any regulation of the Commission.

(b) It shall be unlawful for any person to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any sockeye salmon or pink salmon [2] taken in violation of the convention or of this Act or of any regulation of the Commission.

(c) It shall be unlawful for any person or vessel to use any port or harbor or other place subject to the jurisidiction of the United States for any purpose connected in any way with fishing in violation of the convention or of this Act or of any regulation made by the Commission.

(d) It shall be unlawful for any person or vessel to engage in fishing for sockeye salmon or pink salmon [2] in convention waters without first having obtained such license or licenses as may be used by or required by the Commission, or to fail to produce such license, upon demand, for inspection by an authorized enforcement officer.

(e) It shall be unlawful for any person to fail to make, keep, submit, or furnish any record, or report required of him by the Commission or to refuse to permit any officer authorized to enforce the convention, this Act, and the regulations of the Commission, or any authorized representative of the Commission, to inspect any such record or report at any reasonable time.

(f) It shall be unlawful for any person to molest, interfere with, tamper with, damage, or destroy any boat, net, equipment, stores, provisions, fish-cultural stations, rearing pond, weir, fishway or any other facility acquired, constructed, or maintained by the Commission.

(g) It shall be unlawful for any person or vessel to do any act prohibited or to fail to do any act required by the convention or by this Act or by any regulation of the Commission.

Sec. 4. Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the Commission, or any person who furnishes a false return, record, or report, upon conviction shall be subject to such fine as may be imposed by the court not to exceed $1,000, and shall in addition be prohibited from fishing for and from shipping, transporting, purchasing, selling, offering for sale, importing, exporting, or possessing sockeye salmon or pink salmon [2] from the date of conviction until such time as any delinquent return record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 5 of this Act shall not be invoked for failure to comply with requirements respecting returns, records, and reports.

Sec. 5. (a) Except as provided in section 4, any person violating any provision of the convention or of this Act or the regulation of the Commission upon conviction shall be fined not more than $1,000 or be imprisoned not more than one year, or both, and the court may prohibit such person from fishing for, or from shipping,

transporting, purchasing, selling, offering for sale, importing, exporting, or possessing sockeye salmon or pink salmon [2] for such period of time as it may determine.

(b) The catch of fish of every vessel or of any fishing gear employed in any manner, or any fish caught, shipped, transported, purchased, sold, offered for sale, imported, exported, or possessed in violation of this Act or the regulations of the Commission shall be forfeited; and upon a second and subsequent violation the catch of fish shall be forfeited and every such vessel and any fishing gear and appurtenances involved in the violation may be forfeited.

(c) All procedures of law relating to the seizure, judicial forfeiture, and condemnation of a vessel for violation of the customs laws and the disposition of such vessel or the proceeds from the sale thereof shall apply to seizures, forfeitures, and condemnations incurred, or alleged to have been incurred, under the provisions of this Act insofar as such provisions of law are applicable and not inconsistent with this Act.

(d) In cases of minor violations of the provisions of the convention or of this Act or the regulations of the Commission, and in cases where immediate arrest of the person or seizure of fish, fishing gear, or of a vessel, together with its tackle, apparel, furniture, appurtenances, and cargo, would impose an unreasonable hardship, the person authorized to make such arrest or seizure or any court of competent jurisdiction may, in his or its discretion, issue a citation requiring such person to appear before the proper official of the court having jurisdiction thereof within a specified time, not exceeding fifteen days; or in the case of property, post such citation upon said property and require its delivery to such court within such specified time. Upon the issuance of such citation and the filing of a copy thereof with the clerk of the appropriate court the person so cited and the property so seized and posted shall thereupon be subject to the jurisdiction of the court to answer the order of the court in such cause. Any property so seized shall not be disposed of except pursuant to the order of such court or the provisions of subsection (e) of this section.

(e) When a warrant of arrest or other process in rem, including that specified in subsection (d) of this section, is issued in any cause of admiralty jurisdiction under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation with sufficient sureties or approved corporate surety in such sum as the court shall order, conditioned to deliver the property seized, if condemned, without impairment in value (or, in the case of sockeye salmon or pink salmon, [2] to pay its equivalent in money) or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in the event of any breach of the conditions thereof as determined by the court.

Sec. 6.[6] (a) The President of the United States shall designate a Federal agency which shall be responsible for the enforcement of the provisions of the convention and this Act and the regulations of the Commission, except to the extent otherwise provided for in the convention and this Act. It shall be the duty of the Federal agency so designated to take appropriate measures for enforcement at such times and to such extent as it may deem necessary to insure effective enforcement and for this purpose to cooperate with other Federal agencies, State officers, the Commission, and with the authorized officers of the Dominion of Canada.

(b) The Federal agency designated by the President for enforcement purposes may authorize officers and employees of the State of Washington to enforce the provisions of the convention and of this Act and the regulations of the Commission. When so authorized such officers may function as Federal law-enforcement officers for the purposes of this Act.

(c) Enforcement of the convention and this Act and the regulations of the Commission shall be subject to and in accordance with the provisions of article IX of the convention.

(d) Any duly authorized officer or employee of the Federal agency designated by the President for enforcement purposes under the provisions of subsection (a) of this section 6; any officer or employee of the State of Washington who is authorized by the Federal agency so designated by the President; any enforcement officer of the Fish and Wildlife Service of the Department of the Interior, any Coast Guard officer, any United States marshal or deputy United States marshal, any collector or deputy collector of customs, and any other person authorized to enforce the provisions of the convention, this Act, and the regulations of the Commission, shall have power, without warrant or other process, but subject to the provisions of the convention, to arrest any person committing in his presence or view a violation of the convention or of this Act or of the regulations of the Commission and to take such person immediately for examination before an officer or trial before a court of competent jurisdiction; and shall have power, without warrant or other process, to search any vessel within convention waters when he has reasonable cause to believe that such vessel is subject to seizure under the provisions of the convention or this Act, or the regulations of the Commission, and to search any place of business or any commercial vehicle when he has reasonable

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[6] All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the appendix to Title 5: Government Organization and Employees.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4395, 64 Stat. 1280, set out in the appendix to title 5. The Coast Guard, referred to in this section, was generally a service in the Treasury Department, but such plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard was operating as a part of the Navy under secs. 1 and 3 of Title 14, Coast Guard.

The President by Executive Order 9892, Sept. 22, 1947, 12 F.R. 6345, designated the Fish and Wildlife Service as the Federal Agency responsible for the enforcement of this act.

cause to believe that such place or vehicle contains fish taken, possessed, transported, purchased, or sold in violation of any of the provisions of the convention, this Act, or the regulations of the Commission. Any person authorized to enforce the provisions of the convention and of this Act and the regulations of the Commission shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this Act, and shall have power with a search warrant to search any person, vessel, or place, at any time. The judges of the United States courts and the United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to a violation of the convention or of this Act or of the regulations of the Commission and to take such person immediately for examination before an officer or trial before a court of competent jurisdiction; and shall have power, without warrant or other process, to search any vessel within convention waters when he had reasonable cause to believe that such vessel is subject to seizure under the provisions of the convention or this Act, or the regulations of the Commission, and to search any place of business or any commercial vehicle when he has reasonable cause to believe that such place or vehicle contains fish taken, possessed, transported, purchased, or sold in violation of any of the provisions of the convention, this Act or the regulations of the Commission. Any person authorized to enforce the provisions of the convention and of this Act and the regulations of the Commission shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this Act, and shall have power with a search warrant to search any person, vessel, or place, at any time. The judges of the United States courts and the United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to the provisions of the convention, any person authorized to enforce the convention and this Act and the regulations of the Commission may seize, whenever and wherever lawfully found, all fish caught, shipped, transported, purchased, sold, offered for sale, imported, exported or possessed contrary to the provisions of the convention or this Act or the regulations of the Commission and may seize any vessel together with its tackle, apparel, furniture, appurtenances and cargo, and all fishing gear, used or employed contrary to the provisions of the convention or this Act or the regulations of the Commission, or which it reasonably appears has been used or employed contrary to the provisions of the convention or this Act or the regulations of the Commission.

(e) Evidence of any regulation made by the Commission may be given in any court proceedings by the production of a copy of such regulation certified by the Secretary of the Commission to be a true copy and no proof of the signature of the Secretary on such certification shall be required.

(f) Any authorized representative of the Commission, or any person authorized to enforce this Act and the regulations of the Commission may inspect any licenses issued to persons or vessels

engaging in fishing for sockeye salmon or pink salmon [7] in convention waters and for this purpose may at any reasonable time board any vessel or enter upon any premises where such fishing is or may be conducted.

Sec. 7. (a) All agencies of the Federal Government are authorized, upon request by the Commission, to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties of scientific investigation and improvement of the fisheries,[8] as specified in the convention.

(b) None of the prohibitions contained in this Act, or in the laws and regulations of the States, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the convention.

Sec. 8. (a) There is authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums, from time to time, as may be necessary to enable the Commission and agencies of the Federal Government to carry out the provisions of the convention and of this Act, including purchase, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, research vessels, and other necessary facilities; and printing.

(b) [9] In addition to the amount authorized in subsection (a) of this section, there is authorized to be appropriated the sum of $7,000,000 for the share of the United States of costs and expenses incident to the development and construction of salmon enhancement facilities pursuant to the program for the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system as approved by the Commission, to remain available until expended.

Sec. 9. If any provision of this Act is held invalid for any cause, such invalidity shall not affect the other provisions hereof.

Sec. 10. This Act shall be effective thirty days from the date of its approval.

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[7] Public Law 85-102 inserted the words "or pink salmon".
[8] Public Law 85-102 substituted the word "fisheries" for "fishery".
[9] Public Law 92-504 (86 Stat. 907) added subsec. (b).

7. Atlantic Salmon Convention Act of 1982 [1]

Title III of Public Law 97-839 [H.R. 3942], 96 Stat. 1949 at 1951, approved December 29, 1982

AN ACT To amend the Commercial Fisheries Research and Development Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

* * * * * * *

TITLE III—NORTH ATLANTIC SALMON TREATY

SEC. 301. This title may be cited as the "Atlantic Salmon Convention Act of 1982".

SEC. 302. As used in this title, the term—

(1) "Act of 1976" means the Act entitled "An Act to provide for the conservation and management of the fisheries, and for other purposes", approved April 13, 1976 (16 U.S.C. 1801 et seq.);

(2) "Commission" means any of the Commissions of the Organization that are established by the Convention;

(3) "Commissioner" means a United States Commissioner appointed under section 403 of this title;

(4) "Convention" means the Convention for the Conservation of Salmon in the North Atlantic Ocean, signed at Reykjavik, Iceland, on March 2, 1982;

(5) "Council" means the Council established by the Convention;

(6) "fishing" has the same meaning as such term has in section 3(10) of the Act of 1976 (16 U.S.C. 1802(10));

(7) "Organization" means the North Atlantic Salmon Conservation Organization established under the Convention;

(8) "person" has the same meaning as such term has in section 3(19) of the Act of 1976 (16 U.S.C. 1802(19)); and

(9) "salmon" means all species of salmon which migrate in or into the waters of the Atlantic Ocean north of 36 degrees north latitude.

SEC. 303. (a) The United States shall be represented on the Council and Commissions by three United States Commissioners to be appointed by the President to serve at his pleasure. Of such Commissioners, one shall be an official of the United States Government, and two shall be individuals (not officials of the United States Government) who are knowledgeable or experienced concerning the conservation and management of salmon of United States origin.

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[1] 16 U.S.C. 3601-3608.

(b) The Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the Interior, may designate alternate United States Commissioners. In the absence of a Commissioner appointed under subsection (a) of this section, an alternate Commissioner may exercise at any meeting of the Organization, the Council, or any Commission all functions of such Commissioner.

(c) Individuals who serve as Commissioners and alternate Commissioners shall not receive any compensation for such service. Such individuals shall be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

(d) In carrying out their functions under the Convention, the Commissioners may consult with the appropriate Regional Fishery Management Councils established by section 302 of the Act of 1976 (16 U.S.C. 1852), and may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to consultations described in this subsection.

SEC. 304. (a) The Secretary of State may—

(1) receive, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of the Organization and its subsidiary organs;

(2) with the concurrence of the Secretary of Commerce and the Secretary of the Interior, approve, object to, or withdraw objections to regulatory measures proposed in accordance with the Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed regulatory measure.

(b) If the concurrence required under subsection (a)(2) of this section has not been obtained by the Secretary of State—

(1) regarding the approval of, or the objection to, a proposed regulatory measure within forty-five days after the measure was received on behalf of the United States; or

(2) regarding the withdrawal of an objection of the United States to a proposed regulatory measure within forty-five days after such withdrawal is proposed by the Secretary of State;

the Secretary of State shall submit the matter in disagreement, together with a statement of the opposing positions, to the President for timely disposition.

SEC. 305. (a) The Secretary of Commerce, in cooperation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations pursuant to section 553 of title 5, United States Code, as may be necessary to carry out the purposes and objectives of the Convention and this title, and to implement regulatory measures that are binding on the United States under the Convention. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located.

(b) The Secretary of Commerce, in cooperation with the Secretary of the Interior, shall prepare all statements, reports, and notifica-

tions required by articles 14 and 15 of the Convention and submit such documents to the Secretary of State for transmission to the Organization.

SEC. 306. (a) In carrying out the provisions of the Convention, the Secretary of Commerce, in consultation with the Secretary of the Interior, may arrange for the cooperation of agencies of the United States and the States, and of private institutions and organizations. (b) Appropriate agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention. Such agencies may accept reimbursement from the Organization for providing such services, facilities, and personnel.

SEC. 307. (a) It is unlawful for any person, or any vessel, subject to the jurisdiction of the United States—

(1) to conduct directed fishing for salmon in waters seaward of twelve miles from the baselines from which the breadths of territorial seas are measured, in waters of the Atlantic Ocean north of 36 degrees north latitude; or

(2) to violate any provision of the Convention or this title, or of any regulation promulgated under this title.

(b) Any person who commits any act that is unlawful under subsection (a) of this section shall—

(1) be liable to the United States for a civil penalty under section 308 of the Act of 1976 (16 U.S.C. 1858) to the same extent as if such act were an act prohibited under section 307 of the Act of 1976 (16 U.S.C. 1857); and

(2) be guilty of an offense under section 309 of the Act of 1976 (16 U.S.C. 1859) to the same extent as if such act were an act prohibited by section 307(1) (D), (E), (F), or (H) of the Act of 1976 (16 U.S.C. 1857(1) (D), (E), (F), or (H)).

(c) Any vessel used in the commission of an act which is unlawful under subsection (a) of this section shall be subject to civil forfeiture under section 310 of the Act of 1976 (16 U.S.C. 1860) to the same extent as if such vessel was used in the commission of an act prohibited by section 307 of the Act of 1976 (16 U.S.C. 1857).

SEC. 308. The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and any regulation issued under this title. For purposes of such enforcement, such provisions and regulations shall be considered to be provisions of the Act of 1976 to which section 311 (a), (b), (c), and (d) of the Act of 1976 (16 U.S.C. 1861 (a), (b), (c), and (d), respectively) apply.

SEC. 309. There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the Commissioners and alternate Commissioners in accordance with the Federal Travel Regulation and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States contribution to the Organization as provided in Article 16 of the Convention, not to exceed $50,000 for fiscal year 1983, and not to exceed, for each succeeding fiscal year, the amount assessed by the Organization for the United States for such year.

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8. United States Fishery Export Promotion

Partial text of Public Law 96-561 [S. 2163], 94 Stat. 3275 at 3290, approved December 22, 1980

AN ACT To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

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SEC. 211. UNITED STATES FISHERY TRADE OFFICERS.

(a) APPOINTMENT.—For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve abroad to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

(b) ASSIGNMENT.—Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) FUNCTIONS OF FISHERY TRADE OFFICERS.—The functions of fishery trade officers appointed under subsection (a) shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

(2) to develop, maintain, and make available to interested persons listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or

incentives of such nation or area that affect imports of such products;

(4) to prepare weekly statements regarding the prices for each fishery product for which there may be United States export potential to the foreign nation or *area concerned; and*

(5) to carry out such other functions as the Secretary may require.

(d) ADMINISTRATION.—The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

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9. Fishermen's Protective Act of 1967, as amended[1]

Public Law 83-680 [H.R. 9584], 68 Stat. 883, approved August 27, 1954, as amended by Public Law 90-482 [S. 2261], 82 Stat. 729, approved August 12, 1968; Public Law 92-219 [H.R. 3304], 85 Stat. 286, approved December 23, 1971; Public Law 92-569 [H.R. 7117], 86 Stat. 182, approved October 26, 1972; Public Law 92-594 [S. 3545], 86 Stat. 1313, approved October 27, 1972; Public Law 94-265 [H.R. 200], 90 Stat. 331 at 360, approved April 13, 1976; Public Law 94-273 [S. 2445], 90 Stat. 375 at 377, approved April 21, 1976; Public Law 95-194 [S. 1184], 91 Stat. 1413, approved November 18, 1977; Public Law 95-376 [H.R. 10878], 92 Stat. 714, approved September 18, 1978; Public Law 95-541 [H.R. 7749], 92 Stat. 2048, approved October 28, 1978; Public Law 96-61 [S. 917], 96 Stat. 407, approved August 15, 1979; Public Law 96-289 [H.R. 6614], 94 Stat. 605, approved June 28, 1980; Public Law 96-561 [S. 2163], 94 Stat. 3275 at 3301, approved December 22, 1980; and by Public Law 97-68 [S. 1191], 95 Stat. 1040, approved October 26, 1981

AN ACT To protect the rights of vessels of the United States on the high seas and in territorial waters of foreign countries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this Act the term "vessel of the United States" shall mean any private vessel documented or certificated under the laws of the United States. Notwithstanding any other law, the documentation or certification of any such vessel shall not be considered to be affected, for the purposes of this Act, in any manner or to any extent if at any time during any voyage for the purpose of fishing beyond the fishery conservation zone (as defined in section 3(8) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(8)), the vessel is commanded by other than a citizen of the United States.[2]

Sec. 2.[3] If—

(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign

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[1] 22 U.S.C. 1971-80. Public Law 90-482 amended this act and provided that this act may be cited as the Fisherman's Protective Act of 1967.

[2] This sentence was added by sec. 14 of Public Law 95-541 (92 Stat. 2057).

[3] Sec. 403(a) of the Fishery Conservation and Management Act of 1976 (Public Law 94-265) amended and restated sec. 2. The amendments made by Sec. 403 "(a) became effective on Mar. 1, 1977. Sec. 2 formerly read as follows:

"Sec. 2. In any case where—

"(a) a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and

"(b) there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure,

the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine, fee, or other direct charge which may be reimbursable under section 3(a)."

country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

(A) are unrelated to fishery conservation and management,

(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

(i) for the protection of such vessel and for the health and welfare of its crew;

(ii) to secure the release of such vessel and its crew; and

(iii) to determine the amount of any fine, license fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.

Sec. 3.[4] (a) In any case where a vessel of the United States is seized by a foreign country under the conditions of section 2 and a fine, license fee, registration fee, or any other direct charge must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of the Treasury in the amount certified to him by the Secretary of State as being the amount of the fine, license fee, registration fee, or any other direct charge actually paid. For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.[5] Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 9.

(b) The Secretary of State shall make a certification under subsection (a) of this section as soon as possible after he is notified pursuant to section 2(b) of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and crew. The amount of reimbursement made by the Secretary of the Treasury to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the dis-

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[4] Public Law 90-482 amended sec. 3 by adding the words "license fee, registration fee, or any other direct charge." Public Law 92-569 made former sec. 3 subsection (a), added the last sentence, and added a new subsec. (b).

[5] The words to this point beginning with "For purposes of this section," were added by sec. 403(a)(2) of the Fishery Conservation and Management Act of 1976 (Public Law 94-265). This amendment shall apply to seizures of vessels of the United States occurring on or after Dec. 31, 1974.

trict court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of Treasury reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien.

Sec. 4. The provisions of this Act shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any fishery convention or treaty to which the United States is a party.

Sec. 5.[6] (a) The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by the Secretary of the Treasury under section 3 as a result of the seizure of a vessel of the United States by such country;

(B) any payment made pursuant to section 7 in connection with such seizure, and

(2) take such action as he deems appropriate to make and collect claims against such foreign country for the amounts so reimbursed and payments so made.

(b) If a foreign country fails or refuses to make payment in full on any claim made under subsection (a)(2) of this section within one hundred and twenty days after the date on which such country is notified pursuant to subsection (a)(1) of this section, the Secretary of State shall transfer an amount equal to such unpaid claim or unpaid portion thereof from any funds appropriated by Congress and programed for the current fiscal year for assistance to the government of such country under the Foreign Assistance Act of 1961 unless the President certifies to the Congress that it is in the national interest not to do so in the particular instance (and if such funds are insufficient to cover such claim, transfer shall be made from any funds so appropriated and programed for the next and any succeeding fiscal year) to (1) the Fishermen's Protective Fund established pursuant to section 9 if the amount is transferred with respect to an unpaid claim for a reimbursement made under section 3, or (2) the separate account established in the Treasury of the United States pursuant to section 7(c) if the amount is transferred with respect to an unpaid claim for a payment made under section 7(a). Amounts transferred under this section shall not constitute satisfaction of any such claim of the United States against such foreign country.

Sec. 6. There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.

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[6] Public Law 92-569 amended sec. 5 to read as above. Prior to that amendment it read as follows: "The Secretary of State shall take such action as he may deem appropriate to make and collect claims against a foreign country for amounts expended by the United States under the provisions of this Act (including payments made pursuant to section 7) because of the seizure of a vessel of the United States by such country. If such country fails or refuses to make payment in full within one hundred and twenty days after receiving notice of any such claim of the United States, the Secretary of State shall withhold, pending such payment, an amount equal to such unpaid claim from any funds programed for the current fiscal year for assistance to the government of such country (as shown in materials concerning such fiscal year presented to the Congress in connection with its consideration of amendments to the Foreign Assistance Act of 1961). Amounts withheld under this section shall not constitute satisfaction of any such claim of the United States against each foreign country," as amended by Public Law 90-482.

Sec. 7.[7] (a) The Secretary, upon receipt of an application filed with him at any time after the effective date of this section by the owner of any vessel of the United States which is documented or certificated as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provisions of this section and such other terms and conditions as the Secretary deems appropriate. Such agreement shall provide that, if said vessel is seized by a foreign country and detained under the conditions of section 2 of this Act, the Secretary shall guarantee—

(1) the owner of such vessel for all actual costs, except those covered by section 3 of this Act, incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (A) from any damage to, or destruction of, such vessel, or its fishing gear or other equipment, (B) from the loss of confiscation of such vessel, gear, or equipment, or (C) from dockage fees or utilities;

(2) the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and

(3) the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention, as determined by the Secretary of the Interior, based on the value of the average catch per day's fishing during the three most recent calendar years immediately preceding such seizure and detention of the vessel seized, or, if such experience is not available, then of all commercial fishing vessels of the United States engaged in the same fishery as that of the type and size of the seized vessel.

(b) Payments made by the Secretary under paragraphs (2) and (3) of subsection (a) of this section shall be distributed by the Secretary in accordance with the usual practices and procedures of the particular segment of the United States commercial fishing industry to which the seized vessel belongs relative to the sale of fish caught and the distribution of the proceeds of such sale.

(c) The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. The amount fixed by the Secretary shall be predicated upon at least 33⅓ per centum of the contribution by the Government. All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. Those fees not currently needed for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all revenues accruing from such deposits or investments shall be credited to such separate account.[8] If a transfer of funds is made to the

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[7] Public Law 90-482 added sec. 7 of this Act. Public Law 92-569 added the next to last sentence in subsec. (c).

[8] This sentence was added by sec. 1 of Public Law 97-68 (95 Stat. 1040).

separate account under section 5(b)(2) with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts.[9] All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

(d) All determinations made under this section shall be final. No payment under this section shall be made with respect to any losses covered by any policy of insurance or other provision of law.

(e)[10] The provisions of this section shall be effective until October 1, 1984; except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts.

(f) For the purposes of this section—

(1)[11] the term "Secretary" means the Secretary of Commerce.

(2) the term "owner" includes any charterer of a commercial fishing vessel.

Sec. 8.[12] (a)(1)[13] When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2)[13] When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3)[14] in administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).

(4)[13] Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of fish products (if the certification is made under paragraph (1)) or

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[9] This sentence was added by sec. 4 of Public Law 92-569 (86 Stat. 1183).

[10] Sec. 1 of Public Law 95-376 (92 Stat. 714) extended the date from Oct. 1, 1977, to Oct. 1, 1981, and added the text beginning with "except that * * *". The date was further extended to Oct. 1, 1984, by sec. 1(2) of Public Law 97-68 (95 Stat. 1040).

[11] Public Law 92-594 substituted Secretary of Commerce for Secretary of the Interior.

[12] Public Law 92-219 added sec. 8 to this act.

[13] Sec. 2(1) of Public Law 95-376 (92 Stat. 714) added the paragraph designation "(1)" struck out the last sentence of subsection (a), and added new pars. (2) and (3). Later sec. 3(6) of Public Law 96-61 (93 Stat. 408) redesignated par. (3) as paragraph (4).

[14] Paragraph (3) was added by sec. 3(b) of Public Law 96-61 (93 Stat. 408).

wildlife products (if the certification is made under paragraph (2)) from the offending country for such duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

(b) Within sixty days following certification by the Secretary of Commerce, or the Secretary of the Interior,[15] the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products or wildlife products[16] of the offending country, or if such prohibition does not cover all fish products or wildlife products[16] of the offending country, the President shall inform the Congress of the reasons therefor.

(c) It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any fish products or wildlife products[16] prohibited by the Secretary of the Treasury pursuant to this section.

(d)[17] After making a certification to the President under subsection (a), the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.

(e)[17] (1) Any person violating the provisions of this section shall be fined not more than $10,000 for the first violation, and not more than $25,000 for each subsequent violation.

(2) All fish products and wildlife products[17] brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(f)[17] (1) Enforcement of the provisions of this section prohibiting the bringing or importation of fish products and wildlife products[18] into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such

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[15] Reference to the Secretary of the Interior was added by sec. 2(2)(A) of Public Law 95-376 (92 Stat. 714).

[16] The words "or wildlife products" were added by sec. 2 of Public Law (95-376 (92 Stat. 714)).

[17] Sec. 3(b) of Public Law 96-61 (93 Stat. 408) redesignated subsecs. (d) through (g) as subsecs. (e) through (h), respectively, and added a new subsec. (d).

[18] The words "and wildlife products" were added by sec. 2 of Public Law 95-376 (92 Stat. 714).

warrants or other process as may be required for enforcement of this act and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder;

(B) with or without a warrant or other process, to search any vessel or other conveyance [19] subject to the jurisdiction of the United States, and, if as

a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all fish products brought or imported into the United States in violation of this section or the regulations issued thereunder. Fish products and wildlife products [20] so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health, Education, and Welfare.

(g) [17] The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior are each [21] authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(h) [17] As used in this section—

(1) The term "person" means any individual, partnership, corporation, or association.

(2) The term "United States," when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.

(3) The term "international fishery conservation program" means any ban, restriction, regulation, or other measure in effect [22] pursuant to a multilateral agreement which is in force with respect to the United States,[23] the purpose of which is to conserve or protect the living resources of the sea.

(4) The term "fish products" means fish and marine mammals and all products thereof taken by fishing vessels of an offending country whether or not packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof.

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[19] The words "or other conveyance" were added by sec. 2(5)(B) of Public Law 95-376 (92 Stat. 714).

[20] The words to this point in this sentence were substituted in lieu of the words "Any fish products" by sec. 2(5)(C) of Public Law 95-376 (92 Stat. 714).

[21] References to the Secretary of Commerce and the Secretary of the Interior were added by sec. 2(6) of Public Law 95-376 (92 Stat. 714).

[22] The words "in effect" were substituted in lieu of the words "in force" by sec. 2(7)(A) of Public Law 95-376 (92 Stat. 715).

[23] The words "which is in force with respect to the United States" were substituted in lieu of the words "to which the United States is a signatory party" by sec. 2(7)(B) of Public Law 95-376 (92 Stat. 715).

(5)[24] The term "international program for endangered or threatened species" means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

(6)[24] The term "wildlife products" means fish (other than those to which paragraph (4) applies) and wild animals, and parts (including eggs) thereof, taken within an offending country and all products of any such fish and wild animals, or parts thereof, whether or not such products are packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof. Such term does not include any wild animal or fish if brought or imported into the United States for scientific research.

(7)[24] The term "taking" means—

(A) for purposes of subsection (a)(2)—

(i) to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

(ii) to attempt to engage in any such conduct with respect to,

animals to which an international program for endangered or threatened species applies; and

(B) for purposes of paragraph (6), any conduct described in subparagraph (A)(i), whether or not such conduct is legal under the laws of the offending country, undertaken with respect to any wild animal.

Sec. 9.[25] There is created a Fishermen's Protective Fund which shall be used by the Secretary of the Treasury to reimburse owners of vessels for amounts certified to him by the Secretary of State under section 3. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 5(a) shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 3; except that if a transfer to the fund was made pursuant to section 5(b)(1) with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of $3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund.

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[24] Pars. (5), (6), and (7) were added by sec. 2(7)(C) of Public Law 95-376 (92 Stat. 715).

[25] Sec. 9 was added by sec. 5 of Public Law 92-569, Executive Order 11772, Mar. 21, 1974, 39 F.R. 10879, read as follows:

"DELEGATING CERTAIN AUTHORITY OF THE PRESIDENT TO THE SECRETARY OF STATE

"By virtue of the authority vested in me by the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1971. et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, the Secretary of State is hereby designated and empowered to exercise, without ratification, or other action of the President, the function conferred upon the President by Section 5(b) of the Fishermen's Protective Act of 1967, as amended, of certifying to the Congress that it is in the national interest not to transfer to the Fishermen's Protective Fund or to the separate account established under the Act, pursuant to that Section, amounts appropriated by the Congress and programmed for assistance under the Foreign Assistance Act of 1961."

Sec. 10.[26] (a) For purposes of this section—

(1) The terms "fishery," "fishery conservation zone," "fishing," "fishing vessel," "Secretary," and "vessel of the United States" shall each have the same respective meaning as is given to such terms in section 3 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802).

(2) The term "fishing gear" means any equipment or appurtenance which is necessary for the carrying out of fishing operations by a fishing vessel, whether or not such equipment or appurtenance is attached to such vessel.

(3) The term "fund" means the Fishing Vessel and Gear Damage Compensation Fund established under subsection (f).

(4)[27] The term "resulting economic loss" means the gross income, as estimated by the Secretary, that a fishing vessel owner or operator who is eligible for compensation under this section for damage to, loss of, or destruction of, a fishing vessel or the fishing gear used with such vessel will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the vessel or gear, or both, are repaired or replaced and available for use.

(b) Subject to the provisions of this section, the owner or operator (hereinafter referred to as the "vessel owner") of any fishing vessel which is a vessel of the United States is eligible for monetary compensation under this section for any damage to, loss of, or destruction of such vessel, or any fishing gear used with such vessel, or both, and for any resulting economic loss[28] if the damage, loss, or destruction—

(1) in the case of such vessel—

(A) occurs when such vessel is engaged in any fishery subject to the exclusive fishery management authority of the United States under the Fishery Conservation and Management Act of 1976, and

(B) is attributable to any vessel (or its crew or fishing gear) other than a vessel of the United States; or

(2) in the case of such fishing gear—

(A) occurs when such fishing gear is being used for fishing in any fishery subject to such exclusive management authority; and

(B)[29] is attributable to any other vessel, whether or not such vessel is a vessel of the United States.

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[26] Sec. 10, as added by Public Law 95-194 (91 Stat. 1413), was amended and restated by sec. 3(a) of Public Law 95-376 (92 Stat. 715). Note also sec. 3 (b) and (c) of Public Law 95-376 which provide:

"(b) The amendment made by subsection (a) shall take effect January 1, 1979.

"(c) Nothing in the amendment made by subsection (a) shall be construed as affecting in any manner or to any extent any loan made under section 10 of the Fishermen's Protective Act of 1967 (as in effect before January 1, 1979), and, for purposes of the consideration by the Secretary of Commerce of any application for a loan under such section which was filed, but not acted on, before January 1, 1979, the amendment made by subsection (a) shall not be deemed to have been enacted."

[27] Sec. 241(1) of Public Law 96-561 (94 Stat. 3301) added par. (4).

[28] Sec. 241(2)(A) of Public Law 96-561 (94 Stat. 3301) added the words "and for any resulting economic loss".

[29] Sec. 241(2)(B) of Public Law 96-561 (94 Stat. 3301) amended and restated subpar. (B). It formerly read as follows:

"(B) is attributable to (i) any other vessel, whether such vessel is a vessel of the United States, or (ii) an act of God."

For purposes of subparagraph (B), there shall be a rebuttable presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel.

(c) A vessel owner is not eligible for compensation under this section with respect to fishing vessel or fishing gear damage, loss, or destruction and resulting economic loss[30] unless such owner—

(1) makes application to the Secretary for compensation under this section within 90 days [31] after the day on which the damage, loss, or destruction occurred or was first noticed by the owner;

(2) pays upon making such application a reasonable administrative fee which the Secretary shall deposit into the fund;

(3) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the fishery vessel or fishing gear concerned;

(4) has, in such form as the Secretary shall prescribe by regulation, a current inventory or other evidence of possession of the location of, the fishing gear concerned; and

(5) is in compliance with such other regulations as may be prescribed by the Secretary to carry out this section.

(d)(1) Application for compensation under this section shall be made in such form and manner, and include such documentation and other evidence relating to the cause and extent of the damage, loss or destruction, and resulting economic loss,[32] claimed, as the Secretary shall prescribe by regulation. The Secretary shall promptly, but not later than sixty days after receipt of an application, consider, and issue an initial determination with respect to, the application.

(2) [33] The amount of compensation awarded to any vessel owner under this section shall be—

(A) the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or the fishing gear concerned; and

(B) 25 percent of any resulting economic loss.

Any amount determined pursuant to subparagraph (A) or (B) shall be reduced to the extent that evidence indicates that negligence by the vessel owner or operator contributed to the cause or the extent of the damage, loss, or destruction and shall be further reduced by the amount of compensation, if any, that the vessel owner or operator has received or will receive with respect to the damage, loss,

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[30] Sec. 241(3) of Public Law 96-561 (94 Stat. 3302) added the words ", and resulting economic loss".

[31] The period of time permitted for making an application for compensation was extended from 60 to 90 days by sec. 4(b) of Public Law 96-289 (94 Stat. 606).

[32] Sec. 241(4)(A) of Public Law 96-561 (94 Stat. 3302) added the words ", and resulting economic loss,".

[33] Sec. 241(4)(B) of Public Law 96-561 (96 Stat. 3302) amended and restated par. (2). It formerly read as follows:

"(2) The amount of compensation awarded to any vessel owner under this section shall be—

"(A) determined on the basis of the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or fishing gear concerned;

"(B) proportionally reduced to the extent that evidence indicates that negligence by the vessel owner contributed to the cause or extent of the damage, loss, or destruction; and

"(C) reduced by the amount of compensation, if any, which the vessel owner has received or will receive with respect to the damage, loss, or destruction through insurance, pursuant to any other provision of law, or otherwise."

destruction, or resulting economic loss through insurance, pursuant to any other provision of law, or otherwise.

(3) The initial determination made by the Secretary under paragraph (1) with respect to any application shall—

(A) if the application is disapproved, set forth the reasons therefor; or

(B) if the application is approved, set forth the amount of compensation to which the applicant is entitled and the basis on which such amount was determined.

(4) Any vessel owner who is aggrieved by any decision of the Secretary contained in the initial determination of the Secretary regarding such owner's application may, within thirty days after the date of issue of the initial determination, petition the Secretary for a review of the decision. If petition of review is not made to the Secretary within such thirty-day period regarding the initial determination, the initial determination shall be deemed to be the final determination on the application. Before undertaking any such review, the Secretary shall provide to the vessel owner opportunity to submit additional written or oral evidence relating to the decision. After review the Secretary shall issue a final determiniation with respect to the application.

(5) If compensation is awarded under the final determination on any application, the Secretary shall promptly pay from the fund to such owner the amount of compensation stated in the final determination. Upon the acceptance of such payment by the vessel owner, the United States shall be subrogated to all rights of the vessel owner with respect to which the payment is made.

(e) In addition to any fee imposed under section 204(b)(10) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824 (b)(10)) with respect to any foreign fishing vessel for any year after 1978, the Secretary shall impose a surcharge in an amount not to exceed 20 percent of the amount of the fee imposed under such section for such year. The failure to pay any surcharge imposed under this subsection with respect to any foreign fishing vessel shall be treated by the Secretary as a failure to pay the fee for such vessel under such section 204(b)(10).

(f)(1) There is established in the Treasury of the United States the Fishing Vessel and Gear Damage Compensation Fund. The fund shall be available without fiscal year limitation as a revolving fund for the purposes of administering, and paying compensation awarded under, this section.

(2) The fund shall consist of—

(A) all sums recovered by the United States in the exercise of rights subrogated to it under subsection (d)(5);

(B) all administrative fees collected under subsection (c)(2);

(C) all surcharges collected under subsection (e);

(D) revenues received from deposits or investments made under the last sentence of this paragraph; and

(E) any revenue acquired through the issuance of obligations under paragraph (3).

Sums may be expended from the fund only to such extent and in such amounts as are provided in advance in appropriation Acts. Sums in the fund which are not currently needed for the purpose

of paying such awards shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(3) Whenever the amount in the fund is not sufficient to pay compensation under this section, the Secretary may issue, in an amount not to exceed $5,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notices or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notices or other obligations. Moneys obtained by the Secretary under this paragraph shall be deposited in the fund and redemptions of any such notices or other obligations shall be made from the fund. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The Secretary of the Treasury may sell any such notices or other obligations at such times and prices and upon such terms and conditions as he shall determine. All purchases, redemptions, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation under this section is guilty of a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or both.

NOTE.—Public Law 92-569 (October 26, 1972) also provided:

"SEC. 6. The amendment made by this Act shall apply with respect to seizures of vessels of the United States occurring on or after the date of the enactment of this Act; except that reimbursements under section 3 of the Fishermen's Protective Act of 1967 (as in effect before such date of enactment) may be made from the fund established by the amendment made by section 5 of this Act with respect to any seizure of a vessel occurring before such date of enactment and after December 31, 1970, if no reimbursement was made before such date of enactment."

NOTE.—Sec. 240 of Public Law 96-561, effective December 22, 1980, (94 Stat. 3300) also provided the following:

"SEC. 240. APPLICATIONS AND FILINGS FOR COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE.

"(a) IN GENERAL.—If—

"(1) any owner or operator of a fishing vessel who suffered, after September 17, 1978, and before the date of the enactment of this title, damage to, or loss or destruction of, such vessel or fishing gear used with such vessel, but did not apply for compensation therefore under section 10 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980) within the 60-day period prescribed in subsection (c)(1) of such section; or

"(2) any commercial fisherman who suffered, after September 17, 1978, and before the date of the enactment of this title, damages compensable under title IV of the Outer Continental Shelf Lands Act of 1978 (43 U.S.C 1841 et seq.), but who did not timely file a claim therefor within the 60-day period prescribed in section 405(a) of such Act;

such owner or operator may make application for compensation with respect to such damage, loss or destruction under such section 10, and such commercial fisherman may file a claim for, compensation for such damages under such title IV, to the Secretary of Commerce, within the 60-day period beginning on the date of the enactment of this title.

"(b) SPECIAL PROVISIONS.—(1) Notwithstanding any other provision of law—

"(A) any application or filing timely made under subsection (a) shall be treated by the Secretary of Commerce as an application timely made under such section 10(c)(1), or as a filing timely made under such section 405(a), as the case may be, with respect to the damage, loss, or destruction claimed; and

"(B) any claim for fishing gear loss that was pending on June 1, 1980, before the United States-Union of Soviet Socialist Republics Fisheries Claims Board or the American-Spanish Fisheries Board shall be treated by the Secretary of Commerce as a timely application made, on the date of the enactment of this title, under such section 10(c)(1) for compensation for such loss."

10. Endangered Species Act of 1973, as amended

Partial text of Public Law 93-205 [S. 1983], 87 Stat. 884; 16 U.S.C. 1531-1543, approved December 28, 1973; as amended by Public Law 94-359 [S. 229], 90 Stat. 911, approved July 12, 1976; Public Law 95-632 [S. 2899], 92 Stat. 3751, approved November 10, 1978; Public Law 96-159 [S. 1143], 93 Stat. 1225, approved December 28, 1979; and by Public Law 97-303 [H.R. 6133], 96 Stat. 1411, approved October 13, 1982

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

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FINDINGS, PURPOSES, AND POLICY

Sec. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Oceans;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—(1) [1] It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) [1] It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resources issues in concert with conservation of endangered species.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) [2] The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) [2] The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.[3]

(3) [2] The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to being any endangered species or threatened

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[1] Sec. 9(a) of Public Law 97-304 (96 Stat. 1426) added the par. designation "(1)" and a new par. (2) to subsec. (c).

[2] Sec. 2 of Public Law 95-632 (92 Stat. 3751) redesignated pars. (1), (2), and (3) as (2), (3), and (4), respectively, and added a new par. (1).

[3] Sec. 5 of Public Law 94-359 added the words to this point beginning with ": Provided, however.".

species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressure within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4)[2] The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)[4] (A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6)[4] The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7)[4] The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8)[4] The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9)[4] The term "foreign commerce" includes, among other things, any transaction—

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[4] Sec. 2 of Public Law 95-632 (92 Stat. 3721) redesignated pars. (4), (5), (6), and (7) as pars. (6), (8), (9), and (10), respectively, and added new pars. (5) and (7).

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10)[4] The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11)[5] * * * [Repealed—1982]

(12)[6] The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13)[6] The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(14)[6] The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15)[6] The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(16)[7] The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17)[6] The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Somoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18)[6] The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

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[5] Par. (11), which defined the term "irresolvable conflict", was repealed by sec. 4(b) of Public Law 97-304 (96 Stat. 1420). Originally, par. (11) had been added by sec. 2 of Public Law 95-632 (92 Stat. 2752) and subsequently amended by sec. 2 of Public Law 96-159 (93 Stat. 1225).

[6] Sec. 2 of Public Law 95-632 (92 Stat. 2752) redesignated pars. (8) through (16) as pars. (13) through (21) and added new pars. (11) and (12).

[7] Par. (16), as redesignated, was amended by sec. 2(5) of Public Law 95-632 (92 Stat. 3752).

(19)[6] The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.

(20)[6] The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21)[6] The term "United States" when used in a geographical context, includes all States.

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INTERNATIONAL COOPERATION

Sec. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants [8] including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants [8] in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants [8] and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing

[8] The reference to plants was added by sec. 5 of Public Law 96-159 (93 Stat. 1228).

personnel resources and programs which promote the conservation of fish or wildlife or plants; [8] and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e)[9] * * * [Repealed—1979]

CONVENTION IMPLEMENTATION

Sec. 8A.[10] (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c)(1)[11] SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2)[11] The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d)[12] RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e)[13] WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—(1) The Secretary of the Interior (hereinafter in this subsection referred to as the "Secretary"), in cooperation with the Secretary of State,

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[9] Subsec. (e), which had concerned implementation of the Convention, was repealed by sec. 5(4) of Public Law 96-159 (93 Stat. 1228). This subject is now covered by sec. 8A of this Act.

[10] Sec. 6 of Public Law 96-159 (93 Stat. 1228) added sec. 8A.

[11] Sec. 5(1) of Public Law 97-304 (96 Stat. 1421) added the par. designation "(1)" and a new par. (2) in subsec. (c), effective Jan. 1, 1981.

[12] Sec. 5(2) of Public Law 97-304 (96 Stat. 1421) amended and restated subsec. (d). Previously, subsec. (d) had established an International Convention Advisory Commission.

[13] Sec. 5(3) of Public Law 97-304 (96 Stat. 1421) amended and restated subsec. (e).

shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the "Western Convention"). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

PROHIBITED ACTS

Sec. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B)[14] remove and reduce to possession any such species from areas under Federal jurisdiction;

(C)[14] deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D)[14] sell or offer for sale in interstate or foreign commerce any such species; or

(E)[14] violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1)[15] SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided,* That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttal presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)[16] (A) The provisions of subsection (a)(1) shall not apply to—[17]

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

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[14] Sec. 9(b)(1) of Public Law 97-304 (96 Stat. 1426) redesignated existing subpar. (B), (C), and (D), as (C) (D), and (E), respectively, and added a new subpar. (B).

[15] Sec. 9(b)(2) of Public Law 97-304 (96 Stat. 1426) amended and restated par. (1).

[16] Sec. 4 of Public Law 95-632 (92 Stat. 3760) inserted the paragraph designation "(1)" and added a new par. (2).

[17] This phrase was substituted in lieu of the phrase "This section shall not apply to" by sec. 9(b)(3) of Public Law 97-304 (96 Stat. 1427).

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.—(a) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which

(1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

Sec. 10. (a)[18] PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

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[18] Sec. 6(1) of Public Law 97-304 (96 Stat. 1422) amended and restated subsec. (a). It formerly read as follows:

"(a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species."

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish, or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation

of a specimen listed in appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section.[19] Each notice shall invite the submission from interested parties, within thirty days after the date of notice, written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.[20] Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

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[19] Sec. 3(1) of Public Law 94-359 substituted the word "section" in lieu of "subsection".

[20] Sec. 3(2) of Public Law 94-359 added the words to this point beginning with "; except that such thirty day period".

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplish in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) [21] (1) As used in this subsection—

(A) The term "pre-Act endangered species" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held

[21] Subsec. (f) was added by sec. 2 of Public Law 94-359.

within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial [22] etching or engraving of designs upon, or the substantial [22] carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.[23]

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); [24] and

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[22] Sec. 6(3) of Public Law 97-304 (96 Stat. 1423) added the word "substantial".

[23] This sentence was added by sec. 6(3) of Public Law 97-304 (96 Stat. 1423).

[24] The phrase "unless such exemption is renewed under paragraph (8)" was added by sec. 7(1) of Public Law 96-159 (93 Stat. 1230).

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect and such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)[25] (A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

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[25] Sec. 7(2) of Public Law 96-159 (93 Stat. 1230) added par. (8).

(9)[26] (A) The Secretary shall carry out a comprehensive review of the effectiveness of the regulations prescribed pursuant to paragraph (5) of this subsection—

(i) in insuring that pre-Act finished scrimshaw products, or the raw materials for such products, have been adequately accounted for and not disposed of contrary to the provisions of this Act; and

(ii) in preventing the commingling of unlawfully imported or acquired marine mammal products with such exempted products either by persons to whom certificates of exemption have been issued under paragraph (4) of this subsection or by subsequent purchasers from such persons.

(B) In conducting the review required under subparagraph (A), the Secretary shall consider, but not be limited to—

(i) the adequacy of the reporting and records required of exemption holders;

(ii) the extent to which such reports and records are subject to verification;

(iii) methods for identifying individual pieces of scrimshaw products and raw materials and for preventing commingling of exempted materials from those not subject to such exemption; and

(iv) the retention of unworked materials in controlled-access storage.

The Secretary shall submit a report of such review to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on the Environment and Public Works of the Senate and make it available to the general public. Based on such review, the Secretary shall, on or before October 1, 1983, propose and adopt such revisions to such regulations as he deems necessary and appropriate to carry out this paragraph. Upon publication of such revised regulations, the Secretary may renew for a further period of not to exceed three years any certificate of exemption previously renewed under paragraph (8) of this subsection, subject to such new terms and conditions as are necessary and appropriate under the revised regulations; except that any certificate of exemption that would, but for this clause, expire on or after the date of enactment of this paragraph and before the date of the adoption of such regulations may be extended until such time after the date of adoption as may be necessary for purposes of applying such regulations to the certificate. Notwithstanding the foregoing, however, no person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless such person has been issued a valid certificate of exemption by the Secretary under this subsection and unless such product or the raw material for such product was held by such person on the date of the enactment of this paragraph.".

(g)[27] In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption

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[26] Sec. 6(3)(B) of Public Law 97-304 (96 Stat. 1422) added par. (9).

[27] Subsec. (g) was added by sec. 2 of Public Law 94-359.

or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h)[28] CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article [29] which—

(A) [30] is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraphs (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

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[28] Subsecs. (h) and (i) were added by sec. 5 of Public Law 95-632 (92 Stat. 3760).

[29] The parenthetical phrase "(other than scrimshaw)", which previously appeared at this point, was struck out by sec. 6(4)(A)(i) of Public Law 97-304 (96 Stat. 1424), effective Jan. 1, 1981.

[30] Sec. 6(4)(A)(ii) of Public Law 97-304 (96 Stat. 1424) amended and restated subpar. (A) effective Jan. 1, 1981. It formerly read as follows:

"(A) was made before 1830;".

(i)[31] NONCOMMERCIAL TRANSSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j)[32] EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

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[31] Subsec. (i), as added sec. 5 of Public Law 95-632 (92 Stat. 3760), was amended and restated by sec. 6(5) of Public Law 97-304 (96 Stat. 1424).

[32] Sec. 6(6) of Public Law 97-304 (96 Stat 1424) added subsec. (j).

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

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ENDANGERED PLANTS

Sec. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

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11. Marine Mammal Protection Act of 1972, as amended [1]

Partial text of Public Law 92-522 [H.R. 10420], 86 Stat. 1027, approved October 21, 1972, as amended by Public Law 93-205 [S. 1983], 87 Stat. 884, approved December 28, 1973; Public Law 95-136 [S. 1522], 91 Stat. 1167, approved October 18, 1977; Public Law 95-316 [H.R. 10730], 92 Stat. 380, approved July 10, 1978; Public Law 97-58 [H.R. 4084], 95 Stat. 979, approved October 9, 1981; and by Public Law 97-389 [H.R. 3942], 96 Stat. 1949 at 1951, approved December 29, 1982

AN ACT To protect marine mammals; to establish a Marine Mammal Commission; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

* * * * * * *

FINDINGS AND DECLARATION OF POLICY

Sec. 2. The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

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[1] 16 U.S.C. 1361-1407. See also sec. 602 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 985) which contained a sense of the Congress expressing its concern over the continuing destruction of marine mammals. See vol. I, page 635, for complete text.

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the[2] carrying capacity of the habitat.

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

Sec. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Permits may be issued by the Secretary for taking an importation for purposes of scientific research and for public display if—

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made,

is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 2 of this Act. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103. In any event it shall be the immediate goal that the incidental kill or inciden-

[2] The word "optimum" which previously appeared at this point, was struck out by sec. 1(b)(1) of Public Law 97-58 (95 Stat. 979).

tal serious injury of marine mammals permitted in the course of commerical fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.[3] The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. The Secretary shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which[4] has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)[5](A) During any period of five consecutive years, the Secretary shall allow the incidental, but not the intentional, taking, by

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[3] Par. (2) was amended and restated up to this point by sec. 101(1)(A) of Public Law 97-58 (95 Stat. 979).

[4] The phrase "is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or" was deleted by sec. 101(1)(B) of Public Law 97-58 (95 Stat. 980).

[5] Par. (4) was added by sec. 101(1)(C) of Public Law 97-58 (95 Stat. 980).

citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice and opportunity for public comment—

(i) finds that the total of such taking during such five-year period will have a negligible impact on such species or stock; and

(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment, that—

(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

(ii) the policies, purposes and goals of this Act would be better served through the application of this title without regard to this subsection.

Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f); and

(ii) prescribes regulations setting forth—

(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being

substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

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PROHIBITIONS

Sec. 102. (a) Except as provided in sections 101, 103, 104, 109, 111, and 113 [6] of this title, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; and

(3) [7] for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4) [7] for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; and

(5) [7] for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) Except pursuant to a permit for scientific research issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

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[6] The reference to sec. 109 was added by sec. 3(a)(1)(A) of Public Law 97-58 (95 Stat. 981).

[7] Sec. 3(a)(1) of Public Law 97-58 (95 Stat. 981) redesignated existing par. (4) as par. (5), deleted existing par. (3), and added new pars. (3) and (4).

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; [8] or

(4) taken in a manner deemed inhumane by the Secretary.

(c) It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Subsection (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted [9]; or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) This Act shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) [10] It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

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[8] The phrase "or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973" was struck out by sec. 3(a)(2) of Public Law 97-58 (95 Stat. 981).

[9] The words "or endangered" which previously appeared at this point, were struck out by sec. 3(a)(3) of Public Law 97-58 (95 Stat. 981).

[10] Subsec. (f) was added by sec. 4 of Public Law 95-136 (91 Stat. 1167).

INTERNATIONAL PROGRAM

Sec. 108. (a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act a full report on the results of his efforts under this section.

(b)(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957,[11] as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other.

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[11] 8 UST 2283; TIAS 3948. See boxnote on page 739.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

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TITLE II—MARINE MAMMAL COMMISSION

ESTABLISHMENT OF COMMISSION

Sec. 201. (a) There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b)(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate.[12] The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one

[12] Sec. 202 of Public Law 97-389 (96 Stat. 1951) amended and restated this sentence. Before Sept. 1, 1982, the appointments made by the President to the Commission were subject to the advice and consent of the Senate.

member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Executive Director shall have such duties as the Chairman may assign.

DUTIES OF COMMISSION

Sec. 202. (a) The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949,[13] the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966; [14]

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

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[13] For text, see page 861.
[14] 80 Stat. 1091; 16 U.S.C. 1151 note.

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 204, before submission to Congress, to the Secretary for comment.[15]

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

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COMMISSION REPORTS

Sec. 204. The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.

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[15] The reference to the report required under sec. 204 was inserted in lieu of a general reference to reports and recommendations of the Commission by sec. 6(1) of Public Law 97-58 (95 Stat. 987).

AUTHORIZATION OF APPROPRIATIONS[16]

Sec. 207.[17] There are authorized to be appropriated for the fiscal year in which this title is enacted[18] and for the next five fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed $1,000,000, the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed $2,000,000, the sum appropriated for the fiscal year ending September 30, 1979, shall not exceed $1,000,000, the sum appropriated for the fiscal year ending September 30, 1980, shall not exceed $1,000,000, and the sum appropriated for the fiscal year ending September 30, 1981, shall not exceed $1,000,000.[19]

NOTE.—Sec. 7 of Public Law 97-58 (95 Stat. 987) provides the following authorizations for carrying out the functions of this Act:

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) Department of Commerce.—There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, $7,223,000 for fiscal year 1982, $8,000,000 for fiscal eyar 1983, and $8,800,000 for fiscal year 1984.

(b) Department of the Interior.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, $1,600,000 for fiscal year 1982, $1,760,000 for fiscal year 1983, and $2,000,000 for fiscal year 1984.

(c) Marine Mammal Commission.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, $672,000 for fiscal year 1982, $1,000,000 for fiscal year 1983, and $1,100,000 for fiscal year 1984.

[16] See boxnote, p. 739, for current authorizations for carrying out the purposes of this act.
[17] Sec. 207 was amended and restated by sec. 3 of Public Law 95-136 (91 Stat. 1167).
[18] Fiscal year 1978.
[19] References to the specific amounts to be appropriated in fiscal years 1979, 1980, and 1981 were added by sec. 4 of Public Law 95-316 (92 Stat. 381).

M. AVIATION, SPACE, AND INTERNATIONAL SCIENTIFIC COOPERATION

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1. Antihijacking Act of 1974

Title I of Public Law 93-366 [S. 39], 88 Stat. 409, approved August 5, 1974

AN ACT To amend the Federal Aviation Act of 1958 to implement the Convention for the Suppression of Unlawful Seizure of Aircraft; to provide a more effective program to prevent aircraft piracy; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ANTIHIJACKING ACT OF 1974

Sec. 101. This title may be cited as the "Antihijacking Act of 1974".

Sec. 102. Section 101(32) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(32)), relating to the definition of the term "special aircraft jurisdiction of the United States", is amended to read as follows:

"(32)[1] The term 'special aircraft jurisdiction of the United States' includes—

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States—

"(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

"(ii) having 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft,[1] committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.".

Sec. 103. (a) Paragraph (2) of subsection (i) of section 902 of such Act (49 U.S.C. 1472), relating to the definition of the term "aircraft piracy", is amended by striking out "threat of force or violence and" and inserting in lieu thereof "threat of force or violence, or by any other form of intimidation, and".

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[1] This paragraph was renumbered as par. (34) pursuant to sec. 2 of Public Law 95-504 (92 Stat. 1705).

(b) Section 902 of such Act is further amended by redesignating subsections (n) and (o) as subsections (o) and (p), respectively, and by inserting immediately after subsection (m) the following new subsection:

"AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

"(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft,[2] and is afterward found in the United States shall be punished—

"(A) by imprisonment for not less than 20 years; or

"(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprionment for life.

"(2) A person commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he—

"(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

"(B) is an accomplice of a person who performs or attempts to perform any such act.

"(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

"(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard.".

(c) Subsection (o) of such section 902, as so redesignated by subsection (b) of this section, is amended by striking out "subsections (i) through (m)" and inserting in lieu thereof "subsections (i) through (n)".

Sec. 104. (a) Section 902(i)(1) is [sic] the Federal Aviation Act of 1958 (49 U.S.C. 1472(i)(1)) is amended to read as follows:

"(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished—

"(A) by imprisonment for not less than 20 years; or

"(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.".

(b) Section 902(i) of such Act is further amended by adding at the end thereof the following new paragraph:

"(3) An attempt to commit aircraft piracy shall be within the special aircraft jurisdiction of the United States even though the

[2] 22 UST 1641; TIAS 7192. See vol. III, page 993 for text.

aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed.".

Sec. 105. Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), relating to venue and prosecution of offenses, is amended by adding at the end thereof the following new subsection:

"PROCEDURE IN RESPECT OF PENALTY FOR AIRCRAFT PIRACY

"(c)(1) A person shall be subjected to the penalty of death for any offense prohibited by section 902(i) or 902(n) of this Act only if a hearing is held in accordance with this subsection.

"(2) When a defendant is found guilty of or pleads guilty to an offense under section 902(i) or 902(n) of this Act for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in paragraphs (6) and (7), for the purpose of determining the sentence to be imposed. The hearing shall not be held if the Government stipulates that none of the aggravating factors set forth in paragraph (7) exists or that one or more of the mitigating factors set forth in paragraph (6) exists. The hearings shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury; or

"(iii) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the court and of the Government.

"(3) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of the national security. Any presentence information withheld from the defendant shall not be considered in determining the existence or the nonexistence of the factors set forth in paragraph (6) or (7). Any information relevant to any of the mitigating factors set forth in paragraph (6) may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in paragraph (7) shall be governed by the rules governing the admission of evidence at criminal trials. The Government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in paragraph (6) or (7). The burden of establishing the existence of any of the factors set forth in paragraph (7) is on the Government.

The burden of establishing the existence of any of the factors set forth in paragraph (6) is on the defendant.

"(4) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the factors set forth in paragraph (6) and as to the existence or nonexistence of each of the factors set forth in paragraph (7).

"(5) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the factors set forth in paragraph (7) exists and that none of the factors set forth in paragraph (6) exists, the court shall sentence the defendant to death. If the jury or, if there is no jury, the court finds that none of the aggravating factors set forth in paragraph (7) exists, or finds that one or more of the mitigating factors set forth in paragraph (6) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

"(6) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that at the time of the offense—

"(A) he was under the age of eighteen;

"(B) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

"(C) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

"(D) he was a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

"(E) he could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing death to another person.

"(7) If no factor set forth in paragraph (6) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that—

"(A) the death of another person resulted from the commission of the offense but after the defendant had seized or exercised control of the aircraft; or

"(B) the death of another person resulted from the commission or attempted commission of the offense, and—

"(i) the defendant has been convicted of another Federal or State offense (committed either before or at the time of the commission or attempted commission of the offense) for which a sentence of life imprisonment or death was imposable;

"(ii) the defendant has previously been convicted of two or more State or Federal offenses with a penalty of more than one year imprisonment (committed on different occa-

sions before the time of the commission or attempted commission of the offense), involving the infliction of serious bodily injury upon another person;

"(iii) in the commission or attempted commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense or attempted offense; or

"(iv) the defendant committed or attempted to commit the offense in an especially heinous, cruel, or depraved manner.".

Sec. 106. Title XI of such Act (49 U.S.C. 1501–1513) is amended by adding at the end thereof the following new sections:

"SUSPENSION OF AIR SERVICES

"SEC. 1114. (a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft,[1] or if he determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training or as a sanctuary for, or in any way arms, aids, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier or foreign air carrier to engage in foreign air transportation, and the right of any person to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1102 of this Act, the President's authority to suspend rights under this section shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

"(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or for any person to operate aircraft in foreign air commerce in violation of the suspension of rights by the President under this section.

"SECURITY STANDARDS IN FOREIGN AIR TRANSPORTATION

"SEC. 1115. (a) Not later than 30 days after the date of enactment of this section the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of this Act, of the provisions of subsection (b) of this section.

"(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign

nation with which the United States has a bilateral air transport agreement and in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of this Act, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation,[3] he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such convention. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation.".

Sec. 107. The first sentence of section 901(a)(1) of such Act (49 U.S.C. 1471(a)(1)), relating to civil penalties, is amended by inserting ", or of section 1114," immediately before "of this Act".

Sec. 108. Subsection (a) of section 1007 of such Act (49 U.S.C. 1487), relating to judicial enforcement, is amended by inserting "or, in the case of a violation of section 1114 of this Act, the Attorney General," immediately after "duly authorized agents,".

Sec. 109. (a) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amended by striking out—

"(n) Investigations by the Federal Bureau of Investigation.
"(o) Interference with aircraft accident investigation."

and inserting in lieu thereof—

"(n) Aircraft piracy outside special aircraft jurisdiction of the United States.
"(o) Investigations by Federal Bureau of Investigation.
"(p) Interference with aircraft accident investigation."

(b) That portion of such table of contents which appears under the side heading

"Sec. 903. Venue and prosecution of offenses."

is amended by adding at the end of the following new item:

"(c) Procedure in respect of penalty for aircraft piracy."

(c) That portion of such table of contents which appears under the center heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following new items:

"Sec. 1114. Suspension of air services.
"Sec. 1115. Security standards in foreign air transportation."

* * * * * * *

[3] 61 Stat. 1180.

2. International Cooperation in Scientific Research

a. National Science Foundation Act of 1950, as amended

Partial text of Public Law 81-507 [S. 247], 64 Stat. 154, approved May 10, 1950, as amended by Public Law 86-232 [H.R. 8284], 73 Stat. 468, approved September 8, 1959; and by Public Law 90-407 [H.R. 5404], 82 Stat. 365, approved July 18, 1968

* * * * * * *

INTERNATIONAL COOPERATION AND COORDINATION WITH FOREIGN POLICY

Sec. 13.[1] (a) The Foundation is hereby authorized to cooperate in any international scientific research activities consistent with the purposes of this Act and to expand for such international scientific research activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director, with the approval of the Board, may defray the expenses of representatives of Government agencies and other organizations and of individual scientists to accredited international scientific congresses and meetings whenever he deems it necessary in the promotion of the objectives of this Act.

(b)(1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 11(c), and the authority to cooperate in international scientific research activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

(2) If, in the exercise of the authority referred to in paragraph (1) of this subsection, negotiation with foreign countries or agencies thereof becomes necessary, such negotiation shall be carried on by the Secretary of State in consultation with the Director.[2]

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[1] 42 U.S.C. 1872.

[2] Subsec. (a), Public Law 86-232, Sept. 8, 1959, 73 Stat. 468, authorized the Foundation, with approval of the Secretary of State, to cooperate in scientific activities rather than scientific research activities, and to grant fellowships or make other arrangements with foreign nationals for scientific study or scientific work in the United States. Subsec. (b)(1) deleted "research" from the phrase "scientific research activities."

Subsec. (a), Public Law 90-407, July 18, 1968, 82 Stat. 365, struck out ", with the approval of the Board," following "The Director", (see 42 U.S.C. 1872).

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b. National Aeronautics and Space Act of 1958

Partial text of Public Law 85-568 [H.R. 12575], 72 Stat. 426, approved July 29, 1958

AN ACT To provide for research into problems of flight within and outside the Earth's atmosphere, and for other purposes.

* * * * * * *

INTERNATIONAL COOPERATION

Sec. 205.[1] The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this Act, and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

* * * * * * *

[1] 42 U.S.C. 2475.

c. National Aeronautics and Space Administration Authorization Act, 1976 [1]

Partial text of Public Law 94-39 [H.R. 4700], 89 Stat. 218, approved June 19, 1975

AN ACT To authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes.

* * * * * * *

TITLE IV—UPPER ATMOSPHERIC RESEARCH

PURPOSE AND POLICY

Sec. 401. (a) The purpose of this title is to authorize and direct the Administration to develop and carry out a comprehensive program of research, technology, and monitoring of the phenomena of the upper atmosphere so as to provide for an understanding of and to maintain the chemical and physical integrity of the Earth's upper atmosphere.

(b) The Congress declares that it is the policy of the United States to undertake an immediate and appropriate research, technology, and monitoring program that will provide for understanding the physics and chemistry of the Earth's upper atmosphere.

DEFINITIONS

Sec. 402. For the purpose of this title the term "upper atmosphere" means that portion of the Earth's sensible atmosphere above the troposphere.

PROGRAM AUTHORIZED

Sec. 403. (a) In order to carry out the purposes of this title the Administration in cooperation with other Federal agencies, shall initiate and carry out a program of research, technology, monitoring, and other appropriate activities directed to understand the physics and chemistry of the upper atmosphere.

(b) In carrying out the provisions of this title the Administration shall—

(1) arrange for participation by the scientific and engineering community, of both the Nation's industrial organizations and institutions of higher education, in planning and carrying out appropriate research, in developing necessary technology and in making necessary observations and measurements;

(2) provide, by way of grant, contract, scholarships or other arrangements, to the maximum extent practicable and consistent with other laws, for the widest practicable and appropriate

[1] 42 U.S.C. 2481-2484.

participation of the scientific and engineering community in the program authorized by this title; and

(3) make all results of the program authorized by this title available to the appropriate regulatory agencies and provide for the widest practicable dissemination of such results.

INTERNATIONAL COOPERATION

Sec. 404. In carrying out the provisions of this title, the Administration, subject to the direction of the President and after consultation with the Secretary of State, shall make every effort to enlist the support and cooperation of appropriate scientists and engineers of other countries and international organizations.

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N. OTHER LEGISLATION

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1. Provisions of Law Relating to Travel Outside the United States

a. Local Currency Availability

Partial text of Public Law 83-665 [H.R. 9678], 68 Stat. 832, approved August 26, 1954, as amended by Public Law 83-778 [H.R. 10051], 68 Stat. 1223, approved September 3, 1954; Public Law 84-726 [H.R. 11356], 70 Stat. 560, approved July 18, 1956; Public Law 85-477 [H.R. 12181], 72 Stat. 268, approved June 30, 1958; Public Law 85-766 [H.R. 13450], 72 Stat. 880, approved August 27, 1958; Public Law 86-472 [H.R. 11510], 74 Stat. 138, approved May 14, 1960; Public Law 86-628 [H.R. 12232], 74 Stat. 460, approved July 12, 1960; Public Law 86-633 [H.R. 11380], 78 Stat. 1015, approved October 7, 1964; Public Law 93-126 [H.R. 7645], 87 Stat. 451 at 452, approved October 18, 1973; Public Law 93-371 [H.R. 14012], 88 Stat. 424, approved August 13, 1974; Public Law 94-59 [H.R. 6950], 89 Stat. 269, approved July 25, 1975; Public Law 94-157 [H.R. 10647], 89 Stat. 826 at 837, approved December 18, 1975; Public Law 94-350 [S. 3168], 90 Stat. 823 at 833, approved July 12, 1976; Public Law 94-440 [H.R. 14238], 90 Stat. 1439 at 1445, approved October 1, 1976; and by Public Law 95-384 [S. 3750], 92 Stat. 730 at 742, approved September 26, 1978

AN ACT To promote the security and foreign policy of the United States by furnishing assistance to friendly nations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mutual Security Act of 1954".

* * * * * * *

Sec. 502. * * *.

(b)[1] (1)(A) Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law—

(i) local currencies owned by the United States which are in excess of the amounts reserved under section 612(a) of the Foreign Assistance Act of 1961 and of the requirements of the United States Government in payment of its obligations outside of the United States, as such requirements may be determined from time to time by the President; and

(ii) any other local currencies owned by the United States in amounts not to exceed the equivalent of $75 per day per person or the maximum per diem allowance established under the authority of subchapter I of chapter 57 of title 5 of the United States Code for employees of the United States Government while traveling in a foreign country, whichever is greater, exclusive of the actual cost of transportation;

shall be made available to Members and employees of the Congress for their local currency expenses when authorized as provided in subparagraph (B).

(B) The authorization required for purposes of subparagraph (A) may be provided—

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[1] 22 U.S.C. 1754(b). Subsec.(b) was comprehensively amended and restated by sec. 22 of the International Security Assistance Act of 1978 (92 Stat. 742).

(i) by the Speaker of the House of Representatives in the case of a Member or employee of the House;

(ii) by the chairman of a standing or select committee of the House of Representatives in the case of a member or employee of that committee;

(iii) by the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, in the case of a Member or employee of the Senate;

(iv) by the chairman of a standing, select, or special committee of the Senate in the case of a member or employee of that committee or of an employee of a member of that committee; and

(v) by the chairman of a joint committee of the Congress in the case of a member or employee of that committee.

(C) Whenever local currencies owned by the United States are not otherwise available for purposes of this subsection, the Secretary of the Treasury shall purchase such local currencies as may be necessary for such purposes, using any funds in the Treasury not otherwise appropriated.

(2) On a quarterly basis, the chairman of each committee of the House of Representatives or the Senate and of each joint committee of the Congress (A) shall prepare a consolidated report (i) which itemizes the amounts and dollar equivalent values of each foreign currency expended and the amounts of dollar expenditures from appropriated funds in connection with travel outside the United States, stating the purposes of the expenditures including per diem (lodging and meals), transportation, and other purposes, and (ii) which shows the total itemized expenditures, by such committee and by each member or employee of such committee (including in the case of a committee of the Senate, each employee of a member of the committee who received an authorization under paragraph (1) from the chairman of the committee); and (B) shall forward such consolidated report to the Clerk of the House of Representatives (if the committee is a committee of the House of Representatives or a joint committee whose funds are disbursed by the Clerk of the House) or to the Secretary of the Senate (if the committee is a committee of the Senate or a joint committee whose funds are disbursed by the Secretary of the Senate). Each such consolidated report shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after the report is forwarded pursuant to this paragraph. In the case of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, such consolidated report may, in the discretion of the chairman of the committee, omit such information as would identify the foreign countries in which members and employees of that committee traveled.

(3)(A) Each Member or employee who receives an authorization under paragraph (1) from the Speaker of the House of Representatives, the President of the Senate, the President pro tempore of the Senate, the Majority Leader of the Senate, or the Minority Leader of the Senate, shall within thirty days after the completion of the travel involved, submit a report setting forth the information speci-

fied in paragraph (2), to the extent applicable, to the Clerk of the House of Representatives (in the case of a Member of the House or an employee whose salary is disbursed by the Clerk of the House) or the Secretary of the Senate (in the case of a Member of the Senate or an employee whose salary is disbursed by the Secretary of the Senate). In the case of an authorization for a group of Members or employees, such reports shall be submitted for all Members of the group by its chairman, or if there is no designated chairman, by the ranking Member or if the group does not include a Member, by the senior employee in the group. Each report submitted pursuant to this subparagraph shall be open to public inspection.

(B) On a quarterly basis, the Clerk of the House of Representatives and the Secretary of the Senate shall each prepare a consolidation of the reports received by them under this paragraph with respect to expenditures during the preceding quarter by each Member and employee or by each group in the case of expenditures made on behalf of a group which are not allocable to individual members of the group. Each such consolidation shall be open to public inspection and shall be published in the Congressional Record within ten legislative days after its completion.

b. Reporting Requirements for House Interparliamentary Groups

Partial text of Public Law 86-628 [Legislative Branch Appropriation Act of 1961; H.R. 12232], 74 Stat. 446; 22 U.S.C. 276c-1, approved July 12, 1960, as amended by Public Law 90-137 [S. 1872], 81 Stat. 445 at 463, approved November 19, 1967; and by Public Law 94-59 [H.R. 6950], 89 Stat. 269, approved July 25, 1975

AN ACT Making appropriations for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending June 30, 1961, and for other purposes, namely:

* * * * * * *

Sec. 105.[1] * * *

(b) Each chairman or senior member of the House of Representatives and Senate group or delegation of the United States group or delegation to the Interparliamentary Union,[2] the North Atlantic Assembly,[3] the Canada-United States Interparliamentary Group,[4] the Mexico-United States Interparliamentary Group,[5] or any similar interparliamentary group of which the United States is a member or participates, by whom or on whose behalf local currencies owned by the United States are made available and expended and/or expenditures are made from funds appropriated for the expenses of such group or delegation, shall file with the chairman of the Committee on Foreign Relations of the Senate in the case of the group or delegation of the Senate, or with the chairman of the Committee on International Relations of the House of Representatives in the case of the group or delegation of the House, an itemized report showing all such expenditures made by or on behalf of each Member or employee of the group or delegation together with the purposes of the expenditure, including per diem (lodging and meals), transportation, and for other purposes. Within sixty days after the beginning of each regular session of Congress, the chairman of the Committee on Foreign Relations and the chairman of the Committee on International Relations shall prepare consolidated reports showing with respect to each such group or delegation the total amount expended, the purpose of the expenditures, the amount expended for each such purpose, the names of the Members or employees by or on behalf of whom the expenditures

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[1] Sec. 105 was amended and restated by sec. 1104 of Public Law 94-59.

[2] See page 945 for text of Interparliamentary Union Participation Act.

[3] See page 952 for text of resolution authorizing participation in NATO parliamentary conferences.

[4] See page 948 for text of resolution authorizing participation in parliamentary conferences with Canada.

[5] See page 950 for text of resolution authorizing participation in parliamentary conferences with Mexico.

were made and the amount expended by or on behalf of each Member or employee for each such purpose. The consolidated reports prepared by the chairman of the Committee on Foreign Relations of the Senate shall be filed with the Secretary of the Senate, and the consolidated reports prepared by the chairman of the Committee on International Relations of the House shall be filed with the Committee or, House Administration of the House and shall be open to public inspection.

* * * * * * *

c. Availability of Funds for Field Examination of Estimates

Partial text of Public Law 83-207 [H.R. 6200], 67 Stat. 418 at 438; 31 U.S.C. 22a, approved August 7, 1953

AN ACT Making supplemental appropriations for the fiscal year ending June 30, 1954, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Supplemental Appropriations Act, 1954") for the fiscal year ending June 30, 1954, and for other purposes, namely:

* * * * * * *

"§ 22a. Availability of funds for field examination of estimates.

"Funds made available in any Act shall hereafter be available for examination of estimates of appropriations in the field and the use of such funds for such purpose shall be subject only to regulations by the standing committees concerned."

* * * * * * *

2. Legislation Authorizing U.S. Participation in Parliamentary Conferences [1]

a. Interparliamentary Union

(1) Public Law 74–170 [S. 2276], 49 Stat. 425; 22 U.S.C. 276, approved June 28, 1935, as amended by Public Law 80–409 [S. 1005], 62 Stat. 19, approved February 6, 1948; Public Law 85–477 [H.R. 12181], 72 Stat. 272, approved June 20, 1958; Public Law 87–195 [S. 1983], 75 Stat. 465, approved September 4, 1961; Public Law 87–56 [S. 2996], 76 Stat. 263, approved August 1, 1962; Public Law 88–633 [H.R. 11380], 87 Stat. 1014, approved October 7, 1964; Public Law 90–137 [S. 1872], 81 Stat. 463, approved November 14, 1967; Public Law 92–226 [S. 2819], 86 Stat. 34, approved February 7, 1972; Public Law 93–126 [H.R. 7645], 87 Stat. 452, approved October 18, 1973; Public Law 94–141 [S. 1517], 89 Stat. 756, approved November 29, 1975; Public Law 95–45 [H.R. 5040], 91 Stat. 221 at 223, approved June 15, 1977; and by Public law 95–426 [H.R. 12598], 92 Stat. 963 at 994, approved October 7, 1978

AN ACT To authorize participation by the United States in the Interparliamentary Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated for fiscal year 1976 and for each subsequent fiscal year—

(1) for the annual contribution of the United States toward the maintenance of the Bureau of the Interparliamentary Union for the promotion of international arbitration, an amount equal to 13.61 per centum of the budget of the Interparliamentary Union for the year with respect to which such contribution is to be made if the American group of the interparliamentary Union has approved such budget; and

(2) to assist in meeting the expenses of the American group for such fiscal year, $90,000,[2] or so much thereof as may be necessary.

Funds made available under paragraph (2) shall be disbursed on vouchers to be approved by the Chairman of the House delegation in the case of delegates from the House of Representatives or the Chairman of the Senate delegation in the case of delegates from the Senate, except that either such Chairman may authorize the executive secretary of the American group to approve such vouchers on his behalf.[3] [4]

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[1] See page 942 for laws relating to reporting of expenses incurred in connection with travel outside the United States.

[2] This figure was increased from $45,000 by sec. 710 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 994).

[3] As amended by sec. 204(a) of Public Law 94–141 (89 Stat. 762). Originally $20,000 annually was authorized with $10,000 authorized for the annual contribution of the United States toward maintenance of the Bureau and $10,000 authorized to meet the expenses of the American group. The authorization figures have been amended eight times. Sec. 204(a) reworded the entire section which had previously read, "That an appropriation of $120,000 annually is authorized, $75,000 of which shall be for the annual contributions of the United States toward the mainte-

Continued

Sec. 2. That the American group of the Interparliamentary Union shall submit to the Congress a report for each fiscal year for which an appropriation is made, including its expenditures under such appropriation.

Sec. 3.[5] There shall be not to exceed twelve delegates from the House of Representatives (at least four of whom shall be from the Committee on International Relations) to each Conference of the Interparliamentary Union, such delegates to be appointed by the Speaker of the House of Representatives. The Chairman or Vice Chairman of the House delegation shall be a member from the Committee on International Relations. The Speaker shall designate the Chairman and the Vice Chairman of the House delegation for each such Conference.

Sec. 4.[6] Senate delegates to each conference of the Interparliamentary Union, and to all other parliamentary conferences, shall be designated by the President of the Senate upon recommendations of the majority and minority leaders of the Senate. Unless the President of the Senate, upon the recommendation of the majority leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee. Not fewer than two Senators designated to be in the Senate delegation to each conference of the Interparliamentary Union shall be members of the Committee on Foreign Relations.

Sec. 5.[6] After December 31, 1977, the executive secretary of the American group of the Interparliamentary Union shall be an officer or employee of the Senate or the House of Representatives and shall be appointed—

(1) by the Chairman of the Senate delegation upon recommendations of the majority and minority leaders of the Senate for service during odd-numbered Congresses; and

(2) by the Chairman of the House delegation for service during even-numbered Congresses.

Sec. 6.[6] The certificate of the Chairman of the respective delegation to the Interparliamentary Union (or the certificate of the executive secretary of the American group if the Chairman delegates such authority to him) shall be final and conclusive upon the accounting officers in the auditing of all accounts of the House and Senate delegations to the Interparliamentary Union.

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nance of the Bureau of the Interparliamentary Union for the promotion of international arbitration; and $45,000, or so much thereof as may be necessary, to assist in meeting the expenses of the American group of the Interparliamentary Union for each fiscal year for which an appropriation is made, such appropriation to be disbursed on vouchers to be approved by the president and executive secretary of the American Group."

[4] Sec. 4(d)(1) of Public Law 95-45 (91 Stat. 223) struck out the words "president and the executive secretary of the American group" and inserted the words to this point beginning with, "Chairman of the House delegation * * *".

[5] Sec. 3, as added by sec. 204(b) of Public Law 94-141 (89 Stat. 762), was amended and restated by sec. 4(d)(2) of Public Law 95-45 (91 Stat. 223).

[6] Secs. 4, 5, and 6 were added by sec. 44(d)(3) of Public Law 95-45 (91 Stat. 223).

(2) Designation of Senate delegates to Conferences of the Interparliamentary Union

Public Law 85–474 [H.R. 12428], 72 Stat. 244 at 246; 22 U.S.C. 276c, approved June 30, 1958, as amended by Public Law 94–141 [S. 1517], 89 Stat. 756, approved November 29, 1975

On and after June 30, 1958, Senate delegates to Conferences of the Interparliamentary Union shall be designated by the Presiding Officer of the Senate. Not less than two Senators so designated shall be members of the Committee on Foreign Relations.[7]

[7] The last sentence was added by sec. 204(c) of Public Law 94–141.

b. Canada-United States Interparliamentary Group

Public Law 86-42 [H.J. Res. 254], 73 Stat. 72; 22 U.S.C. 276d-276g, approved June 11, 1959, as amended by Public Law 94-350 [S. 3168], 90 Stat. 823, approved July 12, 1976; and by Public Law 95-45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977

JOINT RESOLUTION To authorize participation by the United States in parliamentary conference with Canada.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not to exceed twenty-four Members of Congress shall be appointed to meet jointly and at least annually and when Congress is not in session (except that this restriction shall not apply during the first session of the Eighty-sixth Congress or to meetings held in the United States) with representatives of the House of Commons and Senate of the Canadian Parliament for discussion of common problems in the interests of relations between the United States and Canada. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the United States group) half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the International Relations [1] Committee), and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate [2] from Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee).

Such appointments shall be for a period of each meeting of the Canada-United States Interparliamentary group except for the four members of the International Relations [1] Committee and the four members of the Foreign Relations Committee, whose appointments shall be for the duration of each Congress.

The Chairman or Vice Chairman of the House delegation shall be a Member from the International Relations Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[3]

Sec. 2. An appropriation of $50,000[4] annually is authorized, $25,000[4] of which shall be for the House delegation and $25,000[4] for the Senate delegation, or so much thereof as may be necessary, to assist in meeting the expenses of the United States group of the

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[1] Sec. 4(a) of Public Law 95-45 (91 Stat. 222) substituted "International Relations" in lieu of "Foreign Affairs."

[2] Sec. 4(a)(1) of Public Law 95-45 (91 Stat. 222) added the words "upon recommendations of the majority and minority leaders of the Senate."

[3] This paragraph was added by Sec. 4(a)(3) of Public Law 95-45 (91 Stat. 222).

[4] Sec. 118(a) of the Foreign Relations Authorization Act, Fiscal Year 1977 (Public Law 94-350) substituted "$50,000" and "$25,000" in lieu of "$30,000" and "$15,000" respectively.

Canada-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

Sec. 3. The United States group of the Canada-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

Sec. 4. The certificate of the Chairman of the House delegation or the Senate delegation of the Canada-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Canada-United States Interparliamentary group.

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c. Mexico-United States Interparliamentary Group

Public Law 86-420 [H.J. Res. 283], 74 Stat. 40; 22 U.S.C. 276h-276k, approved April 9, 1960; as amended by Public Law 94-350 [S. 3168], 90 Stat. 823, approved July 12, 1976; and by Public Law 95-45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977

JOINT RESOLUTION To authorize participation by the United States in parliamentary conferences with Mexico.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not to exceed twenty-four Members of Congress shall be appointed to meet jointly and at least annually with representatives of the Chamber of Deputies and Chamber of Senators of the Mexican Congress for discussion of common problems in the interests of relations between the United States and Mexico. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the United States group) half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the International Relations [1] Committee), and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate [2] from Members of the Senate (not less than four of whom shall be from the Foreign Relations Committee). Such appointments shall be for the period of each meeting of the Mexico-United States Interparliamentary group except for the four members of the International Relations [1] Committee, and the four members of the Foreign Relations Committee, whose appointment shall be for the duration of each Congress. The Chairman or Vice Chairman of the House delegation shall be a Member from the International Relations Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[3]

Sec. 2. An appropriation of $50,000 [4] annually is authorized, $25,000 [4] of which shall be for the House delegation and $25,000 [4] for the Senate delegation, or so much thereof as may be necessary to assist in meeting the expenses of the United States group of the Mexico-United States Interparliamentary group for each fiscal year for which an appropriation is made, the House and Senate portions of such appropriation to be disbursed on vouchers to be approved

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[1] Sec. 4(b) of Public Law 95-45 (91 Stat. 222) substituted "International Relations" in lieu of "Foreign Affairs".

[2] Sec. 4(b)(1) of Public Law 95-45 (91 Stat. 222) added the words "upon recommendations of the majority and minority leaders of the Senate."

[3] This sentence was added by sec. 4(b)(3) of Public Law 94-45 (91 Stat. 222).

[4] Sec. 118(b) of the Foreign Relations Authorization Act Fiscal Year 1977 (Public Law 94-350) substituted "$50,000" and "$25,000" in lieu of "$30,000" and "$15,000" respectively.

by the Chairman of the House delegation and the Chairman of the Senate delegation, respectively.

Sec. 3. The United States group of the Mexico-United States Interparliamentary group shall submit to the Congress a report for each fiscal year for which an appropriation is made including its expenditures under such appropriation.

Sec. 4. The certificate of the Chairman of the House delegation or the Senate delegation of the Mexico-United States Interparliamentary group shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the Mexico-United States Interparliamentary group.

d. United States Group of the North Atlantic Assembly

Public Law 84–689 [H.J. Res. 501], 70 Stat. 523; 22 U.S.C. 1928a–1928d, approved July 11, 1956, as amended by Public Law 85–477 [H.R. 12181], 72 Stat. 261, approved June 30, 1958; Public Law 88–205 [H.R. 7885], 77 Stat. 379, approved December 16, 1963; Public Law 90–137 [S. 1782], 81 Stat. 445, approved November 14, 1967; Public Law 94–350 [S. 3168], 90 Stat. 823, approved July 12, 1976; and by Public Law 95–45 [H.R. 5040], 91 Stat. 221 at 222, approved June 15, 1977

JOINT RESOLUTION To authorize participation by the United States in parliamentary conferences of the North Atlantic Treaty Organization.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That not to exceed twenty-four[1] Members of Congress shall be appointed to meet jointly and annually[2] with representative parliamentary groups from other NATO (North Atlantic Treaty Organization) members, for discussion of common problems in the interests of the maintenance of peace and security in the North Atlantic area. Of the Members of the Congress to be appointed for the purposes of this resolution (hereinafter designated as the "United States Group"), half shall be appointed by the Speaker of the House from Members of the House (not less than four of whom shall be from the Committee on International Relations),[3] and half shall be appointed by the President of the Senate upon recommendations of the majority and minority leaders of the Senate[4] from Members of the Senate. Not more than seven of the appointees from the Senate shall be of the same political party.[5] The Chairman or Vice Chairman of the House delegation shall be a Member from the International Relations Committee, and, unless the President of the Senate, upon the recommendation of the Majority Leader, determines otherwise, the Chairman or Vice Chairman of the Senate delegation shall be a Member from the Foreign Relations Committee.[6]

Sec. 2. There is authorized to be appropriated annually, for the annual contribution of the United States toward the maintenance of the North Atlantic Assembly,[7] such sum as may be agreed upon by the United States Group and approved by such Assembly,[7] but in no event to exceed for any year an amount equal to 25 per centum of the total annual contributions made for that year by all

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[1] Sec. 4(c)(1) of Public Law 95–45 (91 Stat. 222) substituted "twenty-four" in lieu of "eighteen".

[2] The words "and when Congress is not in session," were deleted by Public Law 88–205.

[3] Sec. 4(c)(2) of Public Law 95–45 (91 Stat. 222) added the words to this point beginning with "not less than * * *".

[4] Sec. 4(c)(2) of Public Law 95–45 (91 Stat. 222) added the words "upon recommendations of the majority and minority leaders of the Senate".

[5] This sentence, which previously read, "Not more than five of the appointees from the respective Houses shall be of the same political party.", was amended by Sec. 4(c)(3) of Public Law 95–45 (91 Stat. 222).

[6] This sentence was added by sec. 4(c)(4) of Public Law 95–45 (91 Stat. 222).

[7] "The North Atlantic Treaty Organization Parliamentary Conference" was changed to "North Atlantic Assembly" and "such Conference" was changed to "such Assembly" by Public Law 90–137.

members of the North Atlantic Treaty Organization toward the maintenance of such Assembly,[7] and $50,000, $25,000 for the House delegation and $25,000 for the Senate delegation,[8] or so much thereof as may be necessary, to assist in meeting the expenses of the United States group of the North Atlantic Assembly[7] for each fiscal year for which an appropriation is made, such appropriation to be dispersed on voucher to be approved by the Chairman of the House delegation and the Chairman of the Senate delegation.

Sec. 3. The United States group of the North Atlantic Assembly[7] shall submit to the Congress a report for each fiscal year for which an appropriation is made, including its expenditures under such appropriation.

Sec. 4. The certificate of the Chairman of the House delegation and the Senate delegation of the North Atlantic Assembly[7] shall hereafter be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group of the North Atlantic Assembly.[7]

Sec. 5.[9] In addition to the amounts authorized by section 2, there is authorized to be appropriated $50,000 for fiscal year 1977 to meet the expenses incurred by the United States group in hosting the twenty-second annual meeting of the North Atlantic Assembly. Amounts appropriated under this section are authorized to remain available until expended.

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[8] Public Law 92-226 amended the amounts authorized to be appropriated which formerly were "$30,000, $15,000 for the House delegation and $15,000 for the Senate delegation". This sentence was previously amended and restated by sec. 502(d) of Public Law 85-477.

[9] 22 U.S.C. 1928e. Sec. 5 was added by sec. 107 of the Foreign Relations Authorization Act, Fiscal Year 1977 (Public Law 94-350).

3. International Claims Settlement Acts

a. International Claims Settlement Act of 1949, as amended [1]

Public Law 81-455 [H.R. 4406], 64 Stat. 12, approved March 10, 1950, as amended by Public Law 83-242 [H.R. 5742], 67 Stat. 506, approved August 8, 1953; Reorganization Plan No. 1, effective July 1, 1954, 19 F.R. 3985, 68 Stat. 1279; Public Law 84-285 [H.R. 6382], 69 Stat. 562, approved August 9, 1955; Public Law 85-604 [S. 3557], 72 Stat. 527, approved August 8, 1958; Public Law 85-791 [H.R. 6788], 72 Stat. 941 at 951, approved August 28, 1958; Public Law 88-666 [H.R. 12259], 78 Stat. 1110, approved October 16, 1964; Public Law 89-554 [H.R. 10104], 80 Stat. 378 at 656, approved September 6, 1966; Public Law 89-559 [H.R. 10104], 80 Stat. 378 at 656, approved November 6, 1966; Public Law 90-421 [H.R. 9063], 82 Stat. 420, approved July 4, 1968; Public Law 91-167 [H.R. 11711], 83 Stat. 435, approved December 24, 1969; Public Law 93-460 [H.R. 13261], 88 Stat. 1386, approved October 20, 1974; Public Law 94-542 [S. 3621], 90 Stat. 2509, approved October 18, 1976; Public Law 96-445 [H.R. 6440], 94 Stat. 1891, approved October 13, 1980; Public Law 96-606 [H.R. 5737], 94 Stat. 3534, approved December 28, 1980; and by Public Law 97-164 [H.R. 4482], 96 Stat. 25 at 49, approved April 2, 1982

AN ACT To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Claims Settlement Act of 1949".

TITLE I [2]

Sec. 2. For the purposes of this Title—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(d) The term "Yugoslav Claims Agreement of 1948" means the agreements between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regarding pecuniary claims of the United States and its nationals, signed July 19, 1948.

Sec. 3. (a) [3] * * * [Repealed—1966]

(b) [3] * * * [Repealed—1966]

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[1] 22 U.S.C. 1621-1643k.

[2] Designated "Title 1" by Public Law 84-285.

[3] Subs. (a) and (b) were repealed by sec. 8(a) of Public Law 89-554 (80 Stat. 656).

(c) The Commission [4] may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this Title. Any member of the Commission may be removed by the Secretary of State,[5] upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through the Secretary of State,[5] to the Congress concerning its operations under this Title. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case. No members of such Commission shall be appointed after the effective date of this Title until such Commission is reorganized by further Act of Congress but acting members may be designated by the President as provided by this section, who shall receive no compensation from the funds appropriated by H.R. 6200 for defraying the expenses of such Commission.[6]

Sec. 4. (a) The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof. In the decision of claims under this Title, the Commission shall apply the following in the following order: (1) The provisions of the applicable

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[4] The International Claims Commission was abolished and its functions were transferred to the Foreign Claims Settlement Commission of the United States by Reorganization Plan No. 1, 1954, effective July 1, 1954, 19 F.R. 3985, 68 Stat. 1279. Section 1 of Reorganization Plan No. 1 read:

"FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

"SECTION 1. *Establishment of Commission.*—There is hereby established the Foreign Claims Settlement Commission of the United States, hereinafter referred to as the Commission. The Commission shall be composed of three members, who shall each be appointed by the President by and with the advice and consent of the Senate, hold office during the pleasure of the President, and receive compensation at the rate of $15,000 per annum. The President shall from time to time designate one of the members of the Commission as the Chairman of the Commission, hereinafter referred to as the Chairman. Two members of the Commission shall constitute a quorum for the transaction of the business of the Commission."

[5] The functions of the Secretary of State under these sentences were abolished and transferred to the Foreign Claims Settlement Commission by Reorganization Plan No. 1, 1954. Public Law 89-348 (79 Stat. 1310) modified this reporting requirement from semiannual to annual submission.

[6] H.R. 6200 is the Supplemental Appropriation Act, 1954, Act of Aug. 7, 1953, 67 Stat. 418.

claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity.

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this Title. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this Title shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U.S.C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of

the Commission, or other person commissioned by the Commission, or under letter rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this Title, shall forfeit all rights under this Title, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f)[7] No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title, on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this title. Any and all payments required to be made by the Secretary of the Treasury under this title pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may

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[7] Subsec. (f) was amended by sec. 1 of Public Law 90-421 (82 Stat. 420). It formerly read as follows:

"In connection with any claim decided by the Commission pursuant to this Title in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided, however,* That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereto, any such person shall forfeit all rights under this title."

prescribe, to a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive of all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this title.

Sec. 5. The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this Title. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this Act for transmission to the foreign government concerned.

Sec. 6. The Commission shall complete its affairs in connection with settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954;[8] *Provided,* That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be affected under the provisions of this legislation.

Sec. 7. (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this Title, an amount not exceeding the principal of each award, plus accrued interests on such awards as bear interest, certified pursuant to section 5 of this Title, in accordance with the award. Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b)[9](1) There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 5[10] per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(2)[9] The Secretary of the Treasury shall deduct from any amounts covered, subsequent to the date of enactment of this paragraph, into any special fund, created pursuant to section 8, 5 per centum thereof as reimbursement to the Government of the United

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[8] Public Law 83-242 substituted "December 31, 1954;" for "not more than four years following enactment of this Act;" (March 10, 1956).

[9] Subsec. (b) was amended by sec. 2 of Public Law 90-421 (82 Stat. 420) by inserting "(1)" after the subsection letter and adding at the end thereof, new paragraph (2).

[10] Public Law 83-242 substituted "5" for "3".

States for expenses incurred by the Commission and by the Treasury Department in the administration of this Title. The amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this Title shall be made only to the person or persons on behalf of whom the award is made, except that—

(1)[11] if any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirement of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Comptroller General of the United States to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such award, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury, or the Comptroller General of the United States, as the case may be, shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents or employees with respect to such payment.

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this Title.

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[11] This paragraph was amended by Sec. 3 of Public Law 90-421 (82 Stat. 420). Paragraph (1) formerly read as follows:

"(1) if such person is decreased or is under a legal disability, payment shall be made to his legal representative: *Provided*, That if the total award is not over $500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;".

(f) Nothing in this Title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

Sec. 8. (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claims Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this Title. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this Title shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby permanently appropriated for the making of the payments authorized by section 7 of this Title.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of $17,000,000 being the amount paid by the Government of the Federal People's Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Goverment of the United States as described in subsection (a) of section 4 of this Title.

(c)[12] The Secretary of the Treasury is authorized and directed out of the sums covered, prior to the date of enactment of subsection (e) of this section, into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b)(1) of this Title—

(1) to make payments in full of the principal of awards of $1,000 or less, certified pursuant to section 5 of this Title;

(2) to make payments of $1,000 on the principal of each award of more than $1,000 in principal amount, certified pursuant to section 5 of this Title;

(3) to make additional payment of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than $1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such

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[12] Subsec. (c) was amended by sec. 4 of Public Law 90-421 (82 Stat. 420). It formerly read as follows:

"The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7(b) of this Title—"

awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund of the Government of the Federal People's Republic of Yugoslavia to the extent required under article 1(c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other official or department, agency, or establishment of the United States.

(e)[13] Except as provided in subsection (f),[14] the Secretary of the Treasury is authorized and directed out of sums covered, subsequent to the date of enactment of this subsection, into any special fund created pursuant to this section to make payment on account of awards certified by the Commission pursuant to this title with respect to claims included within the terms of a claims settlement agreement concluded between the Government of the United States and a foreign government as described in subsection (a) of section 4 of this title, as follows and in the following order of priority:

"(1) Payment in the amount of $1,000 or the principal amount of the award, whichever is less;

"(2) Thereafter, payments from time to time on account of the unpaid principal balance of each remaining award which shall bear to such unpaid principal balance the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid principal balance of all such awards; and

"(3) Thereafter, payments from time to time on account of the unpaid balance of each award of interest which shall bear to such unpaid balance of interest, the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid balance of interest of all such awards."

(f)[15] (1) Out of sums covered after May 11, 1979, into the special fund created pursuant to this section to receive funds paid by the People's Republic of China, the Secretary of the Treasury is authorized and directed to make payments on account of awards certified by the Commission pursuant to title V with respect to claims included within the terms of the Agreement Between the Government of the United States of America and the Government of the

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[13] Subsec. (e) was added by sec. 5 of Public Law 90-421 (82 Stat. 420).
[14] The words to this point in subsec. (e) were added by Public Law 96-445 (94 Stat. 1891).
[15] Subsec. (f) was added by Public Law 96-445 (94 Stat. 1891).

People's Republic of China Concerning the Settlement of Claims, signed on May 11, 1979, in the following order of priority:

(A) Payment in the amount of $1,000 or the principal amount of the award, whichever is less.

(B) Thereafter, except as provided in paragraph (2), to the extent there remain unpaid principal balances on awards, payments from time to time on account of the unpaid principal balance of each remaining award which bear to such unpaid principal balance the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid principal balance of all such awards.

(C) Thereafter, payments from time to time on account of the unpaid balance of each award of interest which bear to such unpaid balance of interest the same proportion as the total amount available for distribution at the time such payments are made bears to the aggregate unpaid balance of interest of all such awards.

(2)(A) For the purpose of computing the payments to be made under paragraph (1) to any claimant which was an incorporated business enterprise on the date of nationalization or other taking of property, the award certified by the Commission under title V shall be reduced by the amount of Federal tax benefits derived by such claimant on account of the losses upon which such claim was based, but in no case shall such payments be reduced below the amount paid to such claimant on account of such claim before the date of the enactment of this subsection. For purposes of this subparagraph, such Federal tax benefits shall be the amount by which the claimant's taxes in any prior taxable year or years under chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code of 1939, or subtitle A of the Internal Revenue Code of 1954, were decreased with respect to the loss or losses upon which the claim was based. The sum of the amounts which would otherwise be payable but for this paragraph which are not paid to any such claimant shall be aggregated, and the Secretary of the Treasury is authorized and directed to make payments out of such aggregated sums in accordance with subparagrah (B).

(B) To the extent that there remain unpaid principal balances on awards to claimants which were, on the date of nationalization or other taking of property, nonprofit organizations operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes (after payments made to such nonprofit organizations pursuant to subparagraphs (A) and (B) of paragraph (1) are taken into account), the Secretary of the Treasury is authorized and directed to make payments from time to time on account of the unpaid principal balance of each remaining award to such nonprofit organizations which bear to such unpaid principal balance the same proportion as the total sums aggregated pursuant to subparagraph (A) at the times such payments are made bear to the aggregate unpaid principal balance of all such awards to nonprofit organizations.

Sec. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as

may be necessary to enable the Commission to carry out its functions under this Title.

TITLE II[16]

VESTING AND LIQUIDATION OF BULGARIAN, HUNGARIAN, AND RUMANIAN PROPERTY

Sec. 201. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "Property" means any property, right, or interest.

(3) "Treaty of peace," with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

Sec. 202. (a) In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate[17] and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release, when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the Presi-

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[16] 22 U.S.C. 1631–1641q. Titles II and III were added by Public Law 83–285.

[17] Ex. Ord. No. 10644, Nov. 8, 1955, 20 F.R. 8363, as amended by Ex. Ord. No. 11281, May 13, 1966, 31 F.R. 7215, provided:

"SECTION 1. (a) With the exception of the functions referred to in subsection (b) of this section, the Attorney General, and, as designated by the Attorney General for this purpose, any Assistant Attorney General are hereby designated and empowered to perform the functions conferred by Title II of the International Claims Settlement Act of 1949 [this subchapter] upon the President, and the functions conferred by that title upon any designee of the President.

"(b) The Secretary of the Treasury, and any officer, person, agency or instrumentality designated by the Secretary of the Treasury for this purpose, are hereby designated and empowered to perform the functions conferred upon the President by section 202 of Title II [this section] with respect to the release of blocked property and of the net proceeds of property that are carried in blocked accounts with the Treasury.

"SEC. 2. The Attorney General is hereby designated as the officer in whom property shall vest under the said title II [this subchapter].

"SEC. 3. As used in this order, the term 'functions' includes duties, powers, responsibilities, authority, and discretion, and the term 'perform' may be construed to include 'exercise'."

dent or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended,[18] and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(c) The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court.

(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended,[19] or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section.

Sec. 203. Whenever shares of stock or other beneficial interest in any corporation, association, or company or trust are vested in any officer or agency designated by the President under this title, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel such shares of stock or other beneficial interest upon its, his, or their books and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the designee of the President, or otherwise as such designee shall require.

Sec. 204. Any vesting order, or other order or requirement issued pursuant to this title, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or

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[18] 40 Stat. 411; 50 U.S.C. App. 1.
[19] 5 F.R. 1400; 3 CFR, Cum. Supp., page 645.

recording of conveyances, transfers, or assignments of such property as may be covered by such order or requirement; and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment so filed, registered, or recorded.

Sec. 205. Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Sec. 206. The district courts of the United States are given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this title, with a right of appeal from the final order or decree of such court as provided in sections 1252, 1254, 1291, and 1292 of title 28, United States Code.

Sec. 207. (a) Any person who has not filed a notice of claim under subsection (b) of this section may institute a suit in equity for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and held by such designee. Such suit, to which said designee shall be made a party defendant, shall be instituted in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which the claimant resides, or, if a corporation, where it has its principal place of business, by the filing of a complaint which alleges—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; [20] and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

If the court finds in favor of the claimant, it shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of such property, or the net proceeds thereof, held by said designee or the portion thereof to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such property, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202(a) and

[20] 5 F.R. 1400; 3 CFR, Cum. Supp., page 645.

held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim as provided in section 2112 of title 28, United States Code.[21] The court may enter judgment affirming the order of the designee; or, upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part, and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee or a final judgment or decree shall be entered against the claimant, or the claim or suit otherwise terminated.

(c) The sole relief and remedy of any person having any claim to any property vested pursuant to section 202(a), except a person claiming under section 216, shall be that provided by the terms of subsection (a) or (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President.[22] The claim of any person based on

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[21] The two foregoing sentences were revised by Public Law 85-791 (72 Stat. 951). They formerly read as follows: "Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy must be served on the said designee. Within forty-five days after service of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall certify and file with the court a transcript of the entire record of the proceedings with respect to such claim."

[22] This sentence was amended by sec. 6 of Public Law 90-421 (82 Stat. 421). It formerly read as follows:

"The sole relief and remedy of any person having any claim to any property vested pursuant to sec. 202(a) shall be that provided by the terms of subsec. (a) or (b) of this section, and in any event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President."

his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under sec. 202(a) shall be allowable under subsec. (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a foreign country shall be satisfied except after certification by the Department of State that the country of the national accords protection to nationals of the United States in similar types of cases.

(d) the designee of the President may retain or recover from any property, or the net proceeds thereof, returned pursuant to subsection (a) or (b) of this section an amount not exceeding that expended or incurred by him for the conservation, preservation, or maintenance of such property or proceeds.

Sec. 208. (a) Any property vested in the designee of the President pursuant to section 202(a), or the net proceeds thereof, shall be equitably applied by such designee in accordance with this section to the payment of debts owed by the person who owned such property immediately prior to its vesting in such designee. No debt claim shall be allowed under this section—

(1) if it is asserted against Bulgaria, Hungary, or Rumania (including the government or any political subdivisions, agencies, or instrumentalities thereof); or

(2) if it is based upon an obligation expressed or payable in any currency other than the currency of the United States; or

(3) if it was not due and owing—

(A) on October 9, 1940, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Rumania;

(B) on March 4, 1941, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Bulgaria; or

(C) on March 13, 1941, in the event that the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Hungary.

Any defense to the payment of such claim which would have been available to the debtor shall be available to the designee, except that the period from and after December 7, 1941, shall not be included for the purpose of determining the applicability of any statute of limitations. Debt claims allowable under this section shall include only those of natural persons who were citizens of the United States at the dates their debtors became obligated to them; those of other natural persons who are and have been continuously since December 7, 1941, residents of the United States; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia; and those acquired by the designee of the President under this title. Successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The designee of the President under this title shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of one year from the date of the last vesting in the designee of the President of any property of a debtor in respect to whose debts the date is fixed. No debt shall be paid prior to expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or proceeds in respect of which a suit or proceeding for return pursuant to this title is pending.

(c) The designee shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part. The determination of the designee that a claim is within either paragraph (1) or (2) of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property owned by the debtor immediately prior to its vesting in the designee of the President, as shall remain after deduction of (1) the amount of the expenses of the designee (including both expenses in connection with such property or proceeds thereof, and such portion as the designee shall fix of his other expenses), and of taxes, as defined in section 212, paid by the designee in respect to such property or proceeds; and (2) such amount, if any, as the designee may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the designee, ratable payments shall be made in accordance with subsection (g) of this section to the extent permitted by the money available and additional payments shall be made whenever the designee shall determine that substantial further money has become available, through liquidation of any such property or otherwise. The designee shall not be required, through any judgment of any court, levy of execution, or otherwise, to sell or liquidate any property vested in him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the designee's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the designee as defendant. Such complaint shall be served on the designee. The designee, within forty-five days after service on him, shall certify and

file in said court a transcript of the record of proceedings with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, and the determination of the designee with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the designee's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the designee shall assign priorities in accordance with subsection (g) of this section. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the designee as defendant. A copy of such complaint shall be served upon the designee and on each claimant named in the schedule. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, any findings or other determinations made by the designee with respect thereto, and the schedule prepared by the designee. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the designee pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the designee and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) of this section, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 3466 and 3468 of the Revised Statutes (31 U.S.C., secs. 191 and 193), except as provided in subsection (h) of this section; (3) all other claims for services rendered; for expenses incurred in connection with such services, for rent, for goods and

materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) of this section, payment may be made, permits payment in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the designee of the President under this title.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property vested in the designee under section 202(a), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section. No person asserting any interest, right, or title in any property or proceeds acquired by the designee shall be barred from proceeding pursuant to this title for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or proceeds be deemed to have been waived solely by reason of such proceeding. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property from the designee shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property prior to its vesting in the designee. Payment by the designee to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

Sec. 209. The officer or agency designated by the President under this title to entertain claims under section 207(b) and section 208 shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by section 207(b) and section 208, may be exercised through subordinate officers designated by such officer or agency.

Sec. 210. No suit may be instituted pursuant to section 207(a) after the expiration of one year from the date of vesting of the property in respect of which relief is sought. No return may be made pursuant to section 207(b) unless notice of claim has been filed within one year from the date of vesting of the property in respect of which the claim is filed.

Sec. 211. No property or proceeds shall be returned under this title, nor shall any payment be made or judgment awarded in respect of any property vested in any officer or agency designated by the President under this title unless satisfactory evidence is fur-

nished to said designee, or the court, as the case may be, that the aggregate of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services rendered in connection with such return or payment or judgment does not exceed 10 per centum of the value of such property or proceeds or of such payment. Any agent, attorney at law or in fact, or representative, believing that the aggregate of the fees should be in excess of such 10 per centum may, in the case of any return of, or the making of any payment in respect of, such property or proceeds by the President or such officer or agency as he may designate, petition the district court of the United States for the district in which he resides for an order authorizing fees in excess of 10 per centum and shall name such officer or agency as respondent. The court hearing such petition or a court awarding any judgment in respect of any such property or proceeds, as the case may be, shall approve an aggregate of fees in excess of 10 per centum of the value of such property or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved under this section, or retaining for more than thirty days any portion of a fee, accepted prior to such approval, in excess of the fee as approved, shall be guilty of a violation of this title.

Sec. 212. (a) The vesting in any officer or agency designated by the President under this title of any property or the receipt by such designee of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period before or after such vesting.

(b) The officer or agency designated by the President under this title shall, notwithstanding the filing of any claim or the institution of any suit under this title, pay any tax incident to any such property, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, earnings, increment, or proceeds are held by such designee, unless they are returned pursuant to this title without payment of such tax by the designee. Every such tax shall be paid by the designee to the same extent, as nearly as may be deemed practicable, as though the property had not been vested, and shall be paid only out of the property, or earnings, increment, or proceeds thereof, to which they are incident or out of other property acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or the earnings, increment, or proceeds thereof while held by the designee except with his consent. Where any property is transferred, otherwise than pursuant to section 207(a) or 207(b) hereof, the designee may transfer the property free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property in the hands of the designee.

(c) Subject to the provisions of subsection (b) of this section, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former

owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the designee with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessments, collection, refund, or credit of Federal taxes shall be suspended with respect to any vested property or the earnings, increment, or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate, and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the designee.

Sec. 213. Prior to covering the net proceeds of liquidation of any property into the Treasury pursuant to section 202(a), the designee of the President under this title shall determine—

(1) the amount of his administrative expenses attributable to the performance of his functions under this title with respect to such property and the proceeds thereof. The amount so determined, together with an amount not exceeding that expended or incurred for the conservation, preservation, or maintenance of such property and the proceeds thereof, and for taxes in respect of same, shall be deducted and retained by the designee from the proceeds otherwise covered into the Treasury; and

(2) that the time for the institution of a suit under section 207(a), for the filing of a notice of claim under section 207(b), and for the filing of debt claims under section 208 has elapsed.

The determinations of the designee under this section shall be final and conclusive.

Sec. 214. No property conveyed, transferred, assigned, delivered, or paid to the designee of the President under this title, or the net proceeds thereof, shall be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court, except as provided in this title.

Sec. 215. Whoever shall willfully violate any provision of this title or any rule or regulation issued hereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President or of a designee of the President under this title, issued in compliance with the provisions of this title shall be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both.

Sec. 216.[23] (a) Notwithstanding any other provision of this Act or any provision of the Trading With the Enemy Act, as amended, any person (1) who was formerly a national of Bulgaria, Hungary, or Rumania, and (2) who, as a consequence of any law, decree, or

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[23] Sec. 216 was added by sec. 7 of Public Law 90-421 (82 Stat. 421).

regulation of the nation of which he was a national discriminating against political, racial or religious groups, at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated enjoyed full rights of citizenship under the law of such nation, shall be eligible hereunder to receive the return of his interest in property which was vested under section 202(a) hereof or under the Trading With the Enemy Act, as amended, as the property of a corporation organized under the laws of Bulgaria, Hungary, or Rumania if 25 per centum or more of the outstanding capital stock of such corporation was owned at the date of vesting by such persons and nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan, or if such corporation was subjected after December 7, 1941, under the laws of its country, to special wartime measures directed against it because of the enemy character of some or all of its stockholders; and no certificate by the Department of State as provided under section 207(c) hereof shall be required for such persons.

(b) An interest in property vested under the Trading With the Enemy Act, as amended, as the property of a corporation organized under the laws of Bulgaria, Hungary, or Rumania shall be subject to return under subsection (a) of this section only if a notice of claim for the return of any such interest has been timely filed under the provisions of section 33 of that Act, provided that application may be made therefore within six months after the date of enactment hereof. In the event such interest has been liquidated and the net proceeds thereof transferred to the Bulgarian Claims Fund, Hungarian Claims Fund, or Rumanian Claims Fund, the net proceeds of any other interest representing vested property held in the United States Treasury may be used for the purpose of making the return hereunder.

(c) Determinations by the designee of the President or any other officer or agency with respect to claims under this section, including the allowance or disallowance thereof, shall be final and shall not be subject to review by any court.

TITLE III[24]

CLAIMS AGAINST BULGARIA, HUNGARY, RUMANIA, ITALY, AND THE SOVIET UNION

Sec. 301. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "National of the United States" means (A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

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[24] 22 U.S.C. 1641-1641q. Title III was added by sec. 3 of Public Law 84-285 (69 Stat. 570).

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947,[25] which came into force between that country and the United States on September 15, 1947.

(4) "Memorandum of Understanding" means the Memorandum of Understanding between the United States and Italy regarding Italian assets in the United States and certain claims of nationals of the United States, signed at Washington, District of Columbia, August 14, 1947 (61 Stat. 3962).

(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

(6) "Litvinov Assignment" means (A) the communications dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated November 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November 15, 1933, assigning certain assets to the Government of the United States.

(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

(8) "Commission" means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).[26]

(9) "Property" means any property, right, or interest.

Sec. 302. (a) There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hungarian Claims Fund, the Rumanian Claims Fund, the Italian Claims Funds, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The Secretary of the Treasury shall cover into the Italian Claims Fund the sum of $5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding.[27] The Secretary shall cover into the Treasury the funds col-

[25] 61 Stat., pt. 2.
[26] 22 U.S.C. 1622 note.
[27] 61 Stat. 3962.

lected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(b)[28] The Secretary of the Treasury shall cover into each of the Bulgarian and Rumanian Claims Funds such sums as may be paid by the Government of the respective country pursuant to the terms of any claims settlement agreement between the Government of the United States and the Government of such country.

(c)[29] The Secretary of the Treasury shall cover into the Hungarian Claims Fund, such sums as may be paid to the United States by the Government of Hungary pursuant to the terms of the United States-Hungarian Claims Agreement of March 6, 1973.[30]

Sec. 303. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania.[31] Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania;

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947;

(4)[32] pay effective compensation for the nationalization, compulsory liquidation, or other taking of property of nationals of the United States in Bulgaria and Rumania, between August 9, 1955, and the effective date of the claims agreement between the respective country and the United States; and

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[28] Subsec. (b) was added by sec. 8 of Public Law 90–421 (82 Stat. 422).
[29] Subsec. (c) was added by sec. 1(1) of Public Law 93–460 (88 Stat. 1386).
[30] TIAS 7569; 24 UST 522.
[31] 61 Stat., pt. 2.
[32] Par. (4) was added by sec. 10 of Public Law 90–421 (82 Stat. 422).

(5)[33] pay effective compensation for the nationalization, compulsory liquidation, or other taking of property of nationals of the United States in Hungary, between August 9, 1955, and the date the United States-Hungarian Claims Agreement of March 6, 1973, enters into force.[34]

Sec. 304. (a) The Commission shall receive and determine, in accordance with the Memorandum of Understanding[34] and applicable substantive law including international law, the validity and amount of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy. Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to section 302 of this Act, the Commission shall determine the validity and amount of any claim under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such claims, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund in accordance with the provisions of section 310 of this Act, notwithstanding that the period of time prescribed in section 316 of this Act for the settlement of all claims under this section may have expired.[35]

(b)[36] The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: *Provided,* That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

(c)[36] The Commission shall receive and determine, or redetermine as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were nationals of the United States on September 3, 1943, and the date of enactment of this subsection, against the Government of Italy which arose out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, in territory ceded by Italy pursuant to the treaty of peace with Italy: *Provided,* That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy or subsection (a) of this section.

(d)[36] Within thirty days after enactment of this subsection, or within thirty days after the date of enactment of legislation making appropriations to the Commission for payment of adminis-

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[33] Par. (5) was added by sec. 1(3) of Public Law 93-460 (88 Stat. 1386).
[34] 61 Stat. 3902.
[35] The last sentence in this subsection was added by Public Law 85-604.
[36] Subsecs. (b), (c), (d), (e), (f) were added by sec. 11 of Public Law 90-421 (82 Stat. 422).

trative expenses incurred in carrying out its functions under subsections (b) and (c) of this section, whichever date is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed with the Commission, which limit shall not be more than six months after such publication.

(e)[33] The Commission shall certify awards on claims determined pursuant to subsection (b) and (c) of this section to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund in accordance with the provisions of section 310 of this title, after payment in full of all awards certified pursuant to subsection (a) of this section.

(f)[33] After payment in full of all awards certified to the Secretary of the Treasury pursuant to subsections (a) and (e) of this section, the Secretary of the Treasury is authorized and directed to transfer the unobligated balance in the Italian Claims Fund into the War Claims Fund created by section 13 of the War Claims Act of 1948, as amended.

Sec. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

Sec. 306. (a) Within sixty days after the date of enactment of this title, or within sixty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (1), (2), or (3) of section 303 of this title, whichever date is later, the Commission shall publish in the Federal Register the

time when and the limit of time within which claims may be filed under this title, which limit shall not be more than one year after such publication, except that with respect to claims under section 305 this limit shall not exceed six months.

(b)[37] Within thirty days after enactment of this subsection or the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (4) of section 303 of this title, whichever is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under paragraph (4) of section 303 of this title, which limit shall not be more than six months after such publication.

(c)[38] Within thirty days after enactment of this subsection, or thirty days after enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (5) of section 303, whichever date is later, the Commission shall publish in the Federal Register the time when, and the limit of time within which, claims may be filed with the Commission under paragraph (5) of section 303, which limit shall not be more than six months after such publication.

(d)[38] Notwithstanding any other provision of this section, any national of the United States who was mailed notice by any department or agency of the Government of the United States with respect to filing a claim against the government of Hungary arising out of any of the failures referred to in paragraph (1), (2), or (3) of section 303 of this title, and who did not receive the notice as the result of administrative error in placing a nonexistent address on the notice, may file with the Commission a claim under any such paragraph. The Commission shall publish in the Federal Register, within thirty days after enactment of this paragraph, when the limit of time within which any such claim may be filed with the Commission, which limit shall not be more than six months after such publication.

Sec. 307. The amount of any award made pursuant to this title based on a claim of a national of the United States other than the national of the United States to whom the claim originally accrued shall not exceed the amount of the actual consideration last paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less.

Sec. 308. The Commission shall as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 309. All payments authorized under this title shall be disbursed exclusively from the claims funds attributable to the country with respect to which the claims are allowed pursuant to this title. All amounts covered into the Treasury to the credit of the claims funds created by section 302 are hereby permanently appropriated for the making of the payments authorized under this title.

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[37] Subsec. (b) was added by sec. 12 of Public Law 90-421 (82 Stat. 423).
[38] Subsecs. (c) and (d) were added by sec. 1(4) of Public Law 93-460 (88 Stat. 1386).

Sec. 310. (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to section 305(a)(1) and each award of $1,000 or less made pursuant to section 303 or 304;

(2) Payment in full of the principal amount of each award of $1,000 or less made pursuant to section 305(a)(2);

(3) Payment in the amount of $1,000 on account of the principal of each award of more than $1,000 in amount made pursuant to section 303, 304, or 305(a)(2);

(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of accrued interest on such award as bear interest.

(6)[39] Whenever the Commission is authorized to settle claims by the enactment of paragraph (4) of section 303 of this title with respect to Rumania and Bulgaria, no further payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission pursuant to paragraph (1), (2), or (3) of section 303 of the Bulgarian or Rumanian Claims Funds, as the case may be, until payments on account of awards certified pursuant to paragraph (4) of section 303 with respect to such fund have been authorized in equal proportion to payments previously authorized on existing awards certified pursuant to paragraphs (1), (2), and (3) of section 303.

(7)[40](A) Except as otherwise provided in subparagraph (D), whenever the Commission is authorized to settle claims by enactment of paragraph (5) of section 303 of this title with respect to Hungary, no further payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission under paragraphs (2) and (3) of section 303 out of the Hungarian Claims Fund until payments on account of awards certified under paragraph (5) of section 303 with respect to such fund have been authorized in equal proportions to payments previously authorized on existing awards certified under paragraphs (2) and (3) of section 303.

(B) Except as otherwise provided in subparagraph (D), with respect to awards previously certified under paragraph (1) of section 303, the Secretary of the Treasury shall not authorize any further payments until payments on account of awards certified under paragraphs (2), (3), and (5) of section 303 have been authorized in

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[39] Par. (6) was added by sec. 13 of Public Law 90-421 (82 Stat. 423).

[40] Par. (7) was added by sec. 1(5) of Public Law 93-460 (88 Stat. 1386).

equal proportions to payments previously authorized on existing awards certified under paragraph (1) of section 303.

(C) Except as otherwise provided in subparagraph (D), the Secretary of the Treasury shall not authorize any further payments on account of awards certified under paragraph (3), of section 303 based on Kingdom of Hungary bonds expressed in United States dollars or upon awards to Standstill creditors of Hungary that were the subject matter of the agreement of December 6, 1969, between the Government of Hungary and the American Committee for Standstill creditors of Hungary.

(D) No payments shall be authorized by the Secretary of the Treasury on account of awards certified by the Commission under paragraph (5) of section 303 of this title, and no further payments shall be so authorized under paragraph (1), (2), or (3) of section 303 (except payments certified as the result of claims filed under subsection (d) of section 306), until payments on accounts of awards certified under such paragraphs (1), (2), and (3) as the result of a claims filed under subsection (d) of section 306 have been authorized in equal proportions to payments previously authorized on existing awards certified under such paragraphs and arising out of claims filed other than under such subsection (d).

(E) The Secretary of the Treasury is authorized and directed to deduct the sum of $125,000 from the Hungarian Claims Fund and cover such amount into the Treasury to the credit of miscellaneous receipts in satisfaction of the claim of the United States referred to in article 2, paragraph 4 of the United States-Hungarian Claims Agreement of March 6, 1973. Such amount shall be deducted in annual installments over the period during which the Government of Hungary makes payments to the Government of the United States as provided in article 4 of the agreement.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein; and all such claimants shall participate, in proportion to their indicated interests, in the payments provided by this section in all respects as if the award had been in favor of a single person.

Sec. 311. (a) If a corporation or other legal entity has a claim on which an award may be made under this title, no award may be made to any other person under this title with respect to such claim.

(b) A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock

or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States. This subsection shall not be construed so as to exclude from eligibility a claim based upon a direct ownership interest in a corporation, association, or other entity, or the property thereof, for loss by reason of the nationalization, compulsory liquidation, or other taking of such corporation, association, or other entity by the Governments of Bulgaria, Hungary, Italy, Rumania, or the Soviet Government. Any such claim may be allowed without regard to the per centum of ownership vested in the claimant.[41]

Sec. 312. No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II, or who has been convicted of a violation of any provision of chapter 115, of title 18, of the United States Code,[42] or of any other crime involving disloyalty to the United States.

Sec. 313. Payment of any award made pursuant to section 3^3 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

Sec. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

Sec. 315. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

Sec. 316. (a) The Commission shall complete its affairs in connection with the settlement of claims pursuant to section 305(a)(1) not later than two years, and all other claims pursuant to this title not later than four years, following the date of enactment of this title, or following the date of enactment of legislation making appropriations to the Commission for the payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

(b)[43] The Commission shall complete its affairs in connection with the settlement of claims pursuant to paragraph (4) of section

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[41] The last sentence in sec. 311(b) was added by Public Law 85-604. Sec. 3(b) of Public Law 85-604 also provided that "Any claim heretofore denied under subsection (b) of section 311 of the International Claims Settlement Act of 1949, as amended, prior to the date of enactment of this section, shall be reconsidered by the Foreign Claims Settlement Commission solely to redetermine its validity and amount by reason of the amendments made by this section.".

[42] 62 Stat. 807.

[43] Subsec. (b) was added by sec. 14 of Public Law 90-421 (82 Stat. 423).

303 and subsections (b) and (c) of section 304 of this title not later than two years following the date of enactment of such paragraph, or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under paragraph (4) of section 303 and subsections (b) and (c) of section 304 of this title, whichever is later.

(c)[44] The Commission shall complete its affairs in connection with the settlement of claims pursuant to paragraph (5) of section 303 of this title not later than two years following the deadline established under subsection (c) of section 306 of this title.

Sec. 317. (a) The total remuneration paid to all agents, attorneys at law or in fact, or representatives, for services rendered on behalf of any claimant in connection with any claim filed with the Commission shall not exceed 10 per centum of the total amount paid under this title on account of such claim, or such greater amount as may be determined pursuant to subsection (b) of this section. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration which, together with all remuneration paid to other persons on account of such services and of which he has notice, is in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(b) Not later than three months after the Commission has completed its affairs in connection with the settlement of all claims payable from the fund from which an award is payable, any agent, attorney at law or in fact, or representative who believes that the total remuneration for services rendered in connection with the claim upon which such award is made should exceed the maximum otherwise permitted by this section may, pursuant to such procedure as the Commission shall prescribe by regulation, petition the Commission for an order authorizing the payment of remuneration in excess of such maximum. The Commission shall issue such an order only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess; and such order shall state the amount of the excess which may so be paid. The determination of the Commission in ruling upon such petition shall be within the sole discretion of the Commission and shall not be subjected to review by any court.

Sec. 318. The following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; and subsections (c), (d), (e), and (f) of section 7.

TITLE IV[45]

CLAIMS AGAINST CZECHOSLOVAKIA

Sec. 401. As used in this title—

(1) "National of the United States," means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal

[44] Subsec. (c) was added by sec. 1(6) of Public Law 93-460 (88 State 1386).

[45] 22 U.S.C. 1642-1642q. Title IV was added by Public Law 85-604. See also Czechoslovakian Claims Settlement Act of 1981 (page 1014).

entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly, or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens. (2) "Commission" means the Foreign Claims Settlement Commission of the United States, established, pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279). (3) "Property" means any property, right, or interest.

Sec. 402. (a) The Secretary of the Treasury is directed to hold, in an account in the Treasury of the United States, the net proceeds of the sale of certain Czechoslovakian steel mill equipment heretofore blocked and sold in the United States by order of the Secretary of the Treasury under authority of Executive Order Numbered 9193, dated July 6, 1942 (7 F.R. 5205, July 9, 1942).

(b)[46] There is hereby created in the Treasury of the United States a fund to be designated the Czechoslovakian Claims Fund, for the payment of unsatisfied claims of nationals of the United States against Czechoslovakia as authorized in this title.

(c) If, within one year following the date of enactment of this title, the Government of Czechoslovakia voluntarily settles with and pays to the Government of the United States a sum in payment of claims of United States nationals against Czechoslovakia, all moneys held pursuant to subsection (a) of this section will be disposed of in accordance with the terms of the settlement agreement with Czechoslovakia and applicable provisions of this title and the sum paid by Czechoslovakia shall be covered into the Czechoslovakian Claims Fund.

(d) Upon the expiration of one year after the date of enactment of this title if no settlement with Czechoslovakia of the type specified in subsection (c) of this section has occurred, all moneys held pursuant to subsection (a) of this section except amounts held in reserve pursuant to section 403 of this title, shall be covered into the Czechoslovakian Claims Fund.

(e) The Secretary of the Treasury shall deduct from the Czechoslovakian Claims Fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title.[47] The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(f) After the deduction for administrative expenses pursuant to subsection (e) of this section, and after payment of awards certified pursuant to section 410 of this title, the balance remaining in the Fund, if any, shall be paid to Czechoslovakia in accordance with instructions to be provided by the Secretary of State.

Sec. 403. No judicial relief or remedy shall be available to any person asserting a claim against the United States or any officer or

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[46] See also sec. 4 of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127; page 1015 which establishes three accounts in the Fund which shall be available for payments of claims awarded under sec. 410 of this act, under sec. 5 of Public Law 97-127, and under sec. 6 of Public Law 97-127.

[47] Sec. 4(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127) stipulates that $50,000 shall be deducted from the fund for the costs of administrating this title and Public Law 97-127, and that such deduction shall be made in lieu of the deduction described in this subsection.

agent thereof with respect to any action taken under this title, or any other claim for or on account of the property or proceeds described in section 402 of this title, or for any other action taken with respect thereto except to the extent that the action complained of constitutes a taking of private property without just compensation, and to such extent the sole judicial relief and remedy available shall be an action brought against the United States in the United States Claims Court [48] which action must be brought within one year of the date of enactment of this title or it shall be forever barred; and any action so brought shall receive a preference over all actions which themselves are not given preference by statute. No other court shall have original jurisdiction to consider any such claim by mandamus or otherwise. If any action is brought pursuant to this section the Secretary of the Treasury shall set aside an appropriate reserve in the account containing the moneys held pursuant to subsection (a) of section 402 of this title. Such reserve shall be retained pending a final determination of all issues raised in the action and recovery in any such action shall be limited to and paid out of the moneys so reserved. After a final determination of all issues raised in the action and payment of any judgment against the United States entered pursuant thereto, any balance no longer required to be held in reserve shall be disposed of in accordance with the provisions of subsection (d) of section 402 of this title. Nothing in this section shall be construed to create (1) any liability against the United States for any action taken pursuant to section 404 of this title, (2) any liability against the United States in favor of the Government of Czechoslovakia, any agency or instrumentality thereof or any person who is an assignee or successor in interest thereto, or (3) any other liability against the United States.

Sec. 404. The Commission shall determine in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States, subject, however, to the terms and conditions of an applicable claims agreement, if any, concluded between the Governments of Czechoslovakia and the United States within one year following the date of enactment of this title. In making the determination with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission is authorized to accept the fair or proved value of the said property, right, or interest as of a time when the property or business enterprise taken, was last operated, used, managed or controlled by the national or nationals of the United States asserting the claim irrespective of whether such date is prior to the actual date of nationalization or taking by the Government of Czechoslovakia.

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[48] Reference to the United States Claims Court was substituted in lieu of a reference to the United States Court of Claims by sec. 161(3) of the Federal Courts Improvement Act (Public Law 97-164; 96 Stat. 49).

Sec. 405.[49] A claim under section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

Sec. 406. (a) A claim under section 404 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall be denied.

(b) A claim under section 404 of this title, based upon a direct ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the nationalization or other taking was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

(c) A claim under section 404 of this title, based upon an indirect ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such nationalization or other taking was vested in nationals of the United States.

(d) Any award on a claim under subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant bears to the entire ownership interest thereof.

Sec. 407. In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which such award is made.

Sec. 408. With respect to any claim under section 404 of this title which, at the time of the award, is vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in the payments authorized by this title in all respects as if the award had been in favor of a single person.

Sec. 409. No award shall be made on any claim under section 404 of this title to or for the benefit of (1) any person who has been convicted of a violation of any provision of chapter 115, title 18, of the United States Code, or of any other crime involving disloyalty

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[49] See also sec. 6(b) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127; page 1016) which states in part that the provisions of this section "shall be deemed to be met if such property was owned on such a date by a person who became a national of the United States on or before February 26, 1948."

to the United States, or (2) any claimant whose claim under this title is within the scope of title III of this Act.

Sec. 410. The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

Sec. 411. Within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication.

Sec. 412. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years following the final date for the filing of claims as provided in section 411 of this title or following the enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

Sec. 413. (a) The Secretary of the Treasury is authorized and directed, out of the sums covered into the Czechoslovakian Claims Fund, to make payments on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

(1) Payment in the amount of $1,000 or in the amount of the award, whichever is less.

(2) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to this title which shall bear to such unpaid balance the same proportion as the total amount in the fund available for distribution at the time such payments are made bears to the aggregate unpaid balance of all such awards.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purpose of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant.

(d) If any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates.

(e) Subject to the provisions of any claims agreement hereafter concluded between the Governments of Czechoslovakia and the United States, payment of any award pursuant to this title shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim or be construed to have divested any claimant, or the United States on his behalf, of any

rights against any foreign government for the unpaid balance of his claim.

Sec. 414. No remuneration on account of services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

Sec. 415. The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

Sec. 416. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and (f) of section 7.

Sec. 417. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

TITLE V[50]

PURPOSE OF TITLE

Sec. 501.[51] It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba, or the Chinese Communist regime,[52] which have arisen since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[53] out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Government of Cuba, or the Chinese Communist regime,[52] in order to obtain information concerning the total amount of such claims against the

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[50] 22 U.S.C. 1643-1643k. Title V was added by Public Law 88-666 (78 Stat. 1110). Public Law 89-780 (80 Stat. 1365) amended title V to provide for the determination of the amounts of claims of nationals of the United States.

[51] Sec. 501 was amended by Public Law 89-262, 79 Stat. 988 which struck out "which have arisen out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or".

[52] This section was amended by Public Law 89-780 (80 Stat. 1365) by inserting ", or the Chinese Communist regime," after "the Government of Cuba" at each place it appears in such section.

[53] This section was amended by Public Law 89-780 (80 Stat. 1365) by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959,".

Government of Cuba, or the Chinese Communist regime,[52] on behalf of nationals of the United States. This title shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims.

Sec. 502. For the purposes of this title:

(1) The term "national of the United States," means (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the United States, or of any States, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba or the Chinese Communist regime[52] or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime[52] and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba or the Chinese Communist regime.[52]

(4) The term "Government of Cuba" includes the government of any political subdivision, agency, or instrumentality thereof.

(5)[54] The term "Chinese Communist regime" means the so-called People's Republic of China, including any political subdivision, agency, or instrumentality thereof.

RECEIPT OF CLAIMS

Sec. 503. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba[55] or the Chinese Communist regime,[52] arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[56] for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States, if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or sixty days after the enactment of the amendments

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[54] This paragraph was added by sec. 2 of Public Law 89-780 (80 Stat. 1365).

[55] Sec. 2 of Public Law 89-262 (79 Stat. 988) struck out "arising out of debts for merchandise furnished or services rendered by nationals of the United States without regard to the date on which such merchandise was furnished or services were rendered or which previously appeared at this point".

[56] This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365) by inserting "in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime," after "since January 1, 1959.".

made thereto with respect to claims against the Chinese Communist regime,[57] or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions with respect to each respective claims program authorized under this title, whichever date is later. In making the determination with respect to the validity and the amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement.

(b) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime,[52] arising since January 1, 1959, in the case of claims against the Government of Cuba, or since October 1, 1949, in the case of claims against the Chinese Communist regime,[53] for disability or death resulting from actions taken by or under the authority of the Government of Cuba, or the Chinese Communist regime,[52] if such claims are submitted to the Commission within the period established by the Commission under subsection (a), or within six months after the date the claims first arose (as determined by the Commission), whichever date last occurs.

OWNERSHIP OF CLAIMS

Sec. 504. (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

(b) A claim for disability under section 503(b) may be considered if it is filed by the disabled person or by his successors in interest; and a claim for death under section 503(b) may be considered if filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damage sustained on account of such death. A claim shall not be considered under this section unless the disabled or deceased person was a national of the United States at the time of injury or death and if considered, shall be considered only to the extent the claim has been held by a national or nationals of the United States continuously until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 505. (a) A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be consid-

[57] This section was amended by sec. 3 of Public Law 89-780 (80 Stat. 1365) by inserting "or sixty days after the enactment of the amendments made thereto with respect to claims against the Chinese Communist regime," after "within sixty days after the enactment of this title".

ered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba, or the Chinese Communist regime.[58]

(b) A claim under section 503(a) of this title based upon a direct ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 506.[59] In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

ACTION OF COMMISSION WITH RESPECT TO CLAIMS

Sec. 507. (a) The Commission shall certify to each individual who has filed a claim under this title the amount determined by the Commission to be the loss or damage suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in reaching its decision.

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

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[58] This sentence was added by sec. 3 of Public Law 89-262 (79 Stat. 988). The sentence was amended by sec. 4 of Public Law 89-780 (80 Stat. 1365), by adding to the end thereof a comma and the following: "or the Chinese Communist regime.".

[59] Sec. 506 was amended by sec. 4 of Public Law 89-262 (79 Stat. 988) by striking out: "*Provided*, That the deduction of such amounts shall not be construed as divesting the United States of any rights against the Government of Cuba for the amounts so deducted".

TRANSFER OF RECORDS

Sec. 508. The Secretary of State shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

APPLICATION OF OTHER LAWS

Sec. 509. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: Subsections (b), (c), (d), (e), (h), and (j) of section 4; subsection (f) of section 7.

SETTLEMENT PERIOD

Sec. 510.[60] The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than July 6, 1972.

APPROPRIATIONS

Sec. 511.[61] There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission to pay its administrative expenses incurred in carrying out its functions under this title.

FEES FOR SERVICES

Sec. 512. No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under this title shall exceed 10 per centum of so much of the total amount of such claim, as determined under this title, as does not exceed $20,000, plus 5 per centum of so much of such amount, if any, as exceeds $20,000. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

SEPARABILITY

Sec. 513. If any provision of this Act, or the application thereof to any person or circumstances, shall be held invalid, the reminder of the Act, or the application of such provision to other persons or circumstances, shall not be affected.

TITLE VI[62]

PURPOSE OF TITLE

Sec. 600. It is the purpose of this title to provide for the determination of the validity and amounts of outstanding claims against

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[60] Sec. 510 was amended by Public Law 91-157 (83 Stat. 435).
[61] Sec. 511 as added by Public Law 88-666 (78 Stat. 1113), was amended by sec. 5 of Public Law 89-262, 79 Stat. 988.
[62] 22 U.S.C. 1644-1644m. Title VI was added by Public Law 94-542.

the German Democratic Republic which arose out of the nationalization, expropriation, or other taking of (or special measures directed against) property interests of nationals of the United States. This title shall not be construed as authorizing or as any intention to authorize an appropriation by the United States for the purpose of paying such claims.

DEFINITIONS

Sec. 601. As used in this title—

(1) The term "national of the United States" means—

(a) a natural person who is a citizen of the United States;

(b) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

(2) The term "Commission" means the Foreign Claims Settlement Commission of the United States.

(3) The term "property" means any property, right, or interest, including any lease-hold interest, and debts owed by enterprises which have been nationalized, expropriated, or taken by the German Democratic Republic for which no restoration or no adequate compensation has been made to the former owners of such property.

(4) The term "German Democratic Republic" includes the government of any political subdivision, agency, or instrumentality thereof or under its control.

(5) The term "Claims Fund" is the special fund established in the Treasury of the United States composed of such sums as may be paid to the United States by the German Democratic Republic pursuant to the terms of any agreement settling such claims that may be entered into by the Governments of the United States and the German Democratic Republic.

RECEIPT AND DETERMINATION OF CLAIMS

Sec. 602. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claim by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. Such claims must be submitted to the Commission within the period specified by the Commission by notice published in the Federal Register (which period shall not be more than twelve months

after such publication) within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

OWNERSHIP OF CLAIMS

Sec. 603. A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 604. (a) A claim under section 602 of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States, shall not be considered. A claim under section 602 of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, or taken by the German Democratic Republic.

(b) A claim under section 602 of this title based upon a direct ownership interest in a corporation, association, or other entity for loss, shall be considered subject to the provisions of this title, if such corporation, association or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 602 of this title for losses based upon an indirect ownership interest in a corporation, association, or other entity, shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States.

(d) The amount of any claim covered by subsections (b) or (c) of this section shall be calculated on the basis of the total loss suffered by such corporation, association, or other entity, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 605. In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses, including any amount claimant received under section 202(a) of the War Claims Act of 1948, as amended, for losses which occurred as a direct consequence of special measures directed against such property in any area covered under this title.

CONSOLIDATED AWARDS

Sec. 606. With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person.

CLAIMS FUND

Sec. 607. (a) The Secretary of the Treasury is hereby authorized to establish in the Treasury of the United States a fund to be designated the Claims Fund as defined under section 601(5) for the payment of unsatisfied claims of nationals of the United States against the German Democratic Republic as authorized in this title.

(b) The Secretary of the Treasury shall deduct from any amounts covered into the Claims Fund, an amount equal to 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

AWARD PAYMENT PROCEDURES

Sec. 608. (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to section 602 of this title.

(b) Upon certification of such award, the Secretary of the Treasury is authorized and directed, out of the sums covered into the Claims Fund, to make payments on account of such awards as follows, and in the following order of priority:

(1) payment in full of the principal amount of each award of $1,000 or less;

(2) payment in the amount of $1,000 on account of the principal amount of each award of more than $1,000 in principal amount;

(3) thereafter, payments from time to time, in ratable proportions, on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the fund available for distribution at the time such payments are made;

(4) after payment has been made in full of the principal amounts of all awards, pro rata payments may be made on account of any interest that may be allowed on such awards;

(5) payments or applications for payments shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

SETTLEMENT PERIOD

Sec. 609. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than

three years following the final date for the filing of claims as provided in section 602 of this title.

TRANSFER OF RECORDS

Sec. 610. The Secretary of State is authorized and directed to transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

APPROPRIATIONS

Sec. 611. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their respective administrative expenses incurred in carrying out their functions under this title.

FEES FOR SERVICES

Sec. 612. No remuneration on account of services rendered on behalf of any claimant, in connection with any claim filed with the Commission under this title, shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claims. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

APPLICATION OF OTHER LAWS

Sec. 613. To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of the Act shall be applicable to this title: subsections (b), (c), (d), (e), (h), and (j) of section 4; subsections (c), (d), (e), and (f) of section 7.

SEPARABILITY

Sec. 614. If any provisions of this Act or the application thereof to any person or circumstances shall be held invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected.

PROTESTS

Sec. 615. Notwithstanding the provision of sections 210 and 211 of the War Claims Act of 1948 (Act of July 3, 1948), as amended by Public Law 87-846, the Foreign Claims Settlement Commission established by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) is authorized and directed to receive and consider protests relating to awards made by the Commission during the ten calendar days immediately preceding the expiration of the Commission's mandate to make such awards on May 17, 1967. Any such protests must be filed within ninety days after notice of the enactment of this provi-

sion is filed with and published in the Federal Register, which shall take place within thirty days of enactment. Such protests may include the submission of new evidence not previously before the Commission, and shall be acted upon within thirty days after receipt by the Commission. The Commission may modify awards made during the subject period in accordance with the procedures established by the War Claims Act of 1948, and any increases in awards determined to be appropriated by the Commission shall be certified to and paid by the Secretary of the Treasury out of funds which are now or may hereafter become available in the War Claims Fund in accordance with section 213 of the Act.

TITLE VII[63]

PURPOSE OF TITLE

Sec. 701. It is the purpose of this title to provide for the determination of the validity and amounts of outstanding claims against Vietnam which arose out of the nationalization, expropriation, or other taking of (or special measures directed against) property of nationals of the United States. This title shall not be construed as authorizing or as any intention to authorize an appropriation by the United States for the purpose of paying such claims.

DEFINITIONS

Sec. 702. As used in this title—

(1) the term "national of the United States" means—

(A) a natural person who is a citizen of the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly, or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity;

(2) the term "Commission" means the Foreign Claims Settlement Commission of the United States;

(3) the term "property" means—

(A) any property, right, or interest, including any leasehold interest,

(B) any debt owed by Vietnam or by any enterprise which has been nationalized, expropriated, or otherwise taken by Vietnam, and

(C) any debt which is a charge on property which has been nationalized, expropriated, or otherwise taken by Vietnam;

(4) the term "Vietnam" means—

(A) the Government of the Socialistic Republic of Vietnam,

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[63] Title VII was added by Public Law 96-606.

(B) any predecessor governing authority operating in South Vietnam on or after April 29, 1975, including the Provisional Revolutionary Government of South Vietnam,

(C) the Government of the former Democratic Republic of Vietnam, and

(D) any political subdivision, agency, or instrumentality of any of the entities referred to in subparagraphs (A), (B), and (C); and

(5) the term "Claims Fund" means the special fund established in the Treasury of the United States composed of such sums as may be paid to or realized by the United States pursuant to the terms of any agreement settling those claims described in section 703 that may be entered into between the Governments of the United States and Vietnam.

RECEIPT AND DETERMINATION OF CLAIMS

Sec. 703. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made. Such claims must be submitted to the Commission within the period specified by the Commission by notice published in the Federal Register (which period shall not be more than a period of two years beginning on the date of such publication) within sixty days after the date of the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

OWNERSHIP OF CLAIMS

Sec. 704. A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly, or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission.

CORPORATE CLAIMS

Sec. 705. (a) A claim under section 703 of this Act based upon an ownership interest in any corporation, association, or other entity which is a national of the United States may not be considered. A claim under section 703 based upon a debt of other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico may be considered only if such debt or other obligation is a charge on property which

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has been nationalized, expropriated, or otherwise taken by Vietnam.

(b) A claim under section 703 based upon a direct ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, if such corporation, association, or other entity on the date of the loss was not a national of the United States, without regard to the per centum of ownership vested in the claimant.

(c) A claim under section 703 based upon an indirect ownership interest in a corporation, association, or other entity may be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States or if, at the time of the loss, nationals of the United States in fact controlled the corporation, association, or entity, as determined by the Commission.

(d) The amount of any claim covered by subsection (b) or (c) of this section shall be calculated on the basis of the total loss suffered by the corporation, association, or other entity, with respect to which the claim is made, and shall bear the same proportion to such loss as the ownership interest of the claimant at the time of loss bears to the entire ownership interest thereof.

OFFSETS

Sec. 706. In determining the amount of any claim under this title, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses for which the claim is filed.

CERTIFICATION; ASSIGNED CLAIMS

Sec. 707. (a) The Commission shall certify to each claimant who files a claim under this title the amount determined by the Commission to be the loss suffered by the claimant which is covered by this title. The Commission shall certify to the Secretary of State such amount and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in making that determination.

(b) In any case in which a claim under this title is assigned by purchase before the Commission determines the amount due on that claim, the amount so determined shall not exceed the amount of actual consideration paid by the last such assignee.

CONSOLIDATED AWARDS

Sec. 708. With respect to any claim under section 703 of this Act which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled to the award, which award shall indicate the respective interests of such claimants in the award, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person.

CLAIMS FUND

Sec. 709. (a) The Secretary of the Treasury may establish in the Treasury of the United States the Claims Fund for the payment of unsatisfied claims of nationals of the United States against Vietnam, as authorized by this title.

(b) The Secretary of the Treasury shall deduct from any amounts covered into the Claims Fund an amount equal to 5 per centum thereof as reimbursement to the Government of the United States for expenses incurred by the Commission and by the Treasury Department in the administration of this title. The amounts so deducted shall be covered into the Treasury as miscellaneous receipts.

AWARD PAYMENT PROCEDURES

Sec. 710. (a) The Commission shall certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to section 703 of this Act.

(b)(1) Upon certification of each award made pursuant to section 703, the Secretary of the Treasury shall, out of the sums covered into the Claims Fund, make payments on account of such awards as follows, and in the following order of priority:

(A) Payment in the amount of $2,500 or the principal amount of the award, whichever is less.

(B) Thereafter, payments from time to time, in ratable proportions, on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the Claims Fund available for distribution at the time such payments are made.

(2) After payment has been made in full of the principal amounts of all awards pursuant to paragraph (1), pro rata payments may be made on account of any interest that may be allowed on such awards.

(c) Payments or applications for payments under subsection (b) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

SETTLEMENT PERIOD

Sec. 711. The Commission shall complete its affairs in connection with the settlement of claims pursuant to this title not later than three years after the final date for the filing of claims as provided in section 703 of this Act.

TRANSFER OF RECORDS

Sec. 712. The Secretary of State, the Secretary of the Treasury, and the Secretary of Defense shall transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this title as may be required by the Commission in carrying out its functions under this title.

AUTHORIZATION OF APPROPRIATIONS

Sec. 713. There are authorized to be appropriated for any fiscal year beginning on or after October 1, 1980, such sums as may be necessary to enable the Commission and the Treasury Department to pay their respective administrative expenses incurred in carrying out their functions under this title. Amounts appropriated under this section may remain available until expended.

FEES FOR SERVICES

Sec. 714. No remuneration on account of services rendered on behalf of any claimant, in connection with any claim filed with the Commission under this title, shall exceed 10 per centum of the total amount paid pursuant to any award certified under the provisions of this title on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

APPLICATION OF OTHER PROVISIONS OF THE ACT

Sec. 715. (a) To the extent they are not inconsistent with the provisions of this title, the following provisions of title I of this Act shall be applicable to this title: subsections (b), (c), (d), (e), and (h) of section 4 and subsections (c), (d), (e), and (f) of section 7. Any reference in such provisions to "this title" shall be deemed to be a reference to those provisions and to this title.

(b) Except as otherwise provided in this title and in those provisions of title I referred to in subsection (a), the Commission shall comply with the provisions of subchapter II of chapter 5, and the provisions of chapter 7, of title 5, United States Code.

SEPARABILITY

Sec. 716. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of this title or the application of such provision to other persons or circumstances shall not be affected.

b. Ryukyu Claims Settlement Act

Public Law 89-296 [S.J. Res. 32], 79 Stat. 1071, approved October 27, 1965

JOINT RESOLUTION To authorize a contribution to certain inhabitants of the Ryukyu Islands for death and injury to persons and for use of and damage to private property, arising from acts and omissions of the United States Armed Forces, or members thereof, after August 15, 1945, and before April 28, 1952.

Whereas certain persons of the Ryukyu Islands suffered damages incident to the activities of the Armed Forces of the United States, or members thereof, after the surrender of Japanese forces in the Ryukyus on August 15, 1945, and before the effective date of the Treaty of Peace with Japan on April 28, 1952;

Whereas article 19 of the Treaty of Peace with Japan extinguished the legal liability of the United States for any claims of Japanese nationals, including Ryukyuans, with the result that the United States has made no compensation for the above-mentioned damages (except for use of and damage to land during the period from July 1, 1950 to April 28, 1952);

Whereas it is particularly consonant with the concern of the United States, as the sole administering authority in the Ryukyu Islands, for the welfare of the Ryukyuan people, that those Ryukyuans who suffered damages incident to the activities of the United States Armed Forces, or members thereof, should be compensated therefor;

Whereas payment of ex gratia compensation, by advancing the welfare of the Ryukyuan people, will promote the security interest, foreign policy, and foreign relations of the United States; and

Whereas the High Commissioner of the Ryukyu Islands has considered the evidence regarding these claims, and has determined, in an equitable manner, those claims which are meritorious, and the amounts thereof: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States should make an ex gratia contribution to the persons (excluding municipalities) determined by the High Commissioner of the Ryukyu Islands to be meritorious claimants, in the amounts determined by him, and that the Secretary of the Army or his designee should, under regulations prescribed by the Secretary of Defense, pay such amounts to the claimants or their legal heirs, as a civil function of the Department of the Army; and be it further

Resolved, That no funds appropriated under this joint resolution shall be disbursed to satisfy claims, or portions thereof, which have been satisfied by contributions made by the Government of Japan.

Sec. 2. There is authorized to be appropriated not to exceed $22,000,000 [1] to carry out the provisions of this joint resolution,

[1] Public Law 89-691 (80 Stat. 1018), approved Oct. 15, 1966, appropriated the amount "$21,040,000."

which funds are authorized to remain available for two years from the effective date of their appropriation. Any funds unobligated by the end of that period shall be covered into the Treasury of the United States.

Sec. 3. No remuneration on account of services rendered on behalf of any claimant in connection with any claim shall exceed 5 per centum of the total amount paid, pursuant to the provisions of this joint resolution, on such claim; except that no remuneration on account of such services rendered on behalf of any association of claimants by any agent or attorney (including organizations thereof) shall exceed 1 per centum of the aggregate amount so paid on the claims involved. Fees already paid for such services shall be deducted from the amounts authorized under this joint resolution. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

c. Micronesian Claims Act of 1971, as amended

Public Law 92-39 [H.J. Res. 617], 85 Stat. 92, 50 App. U.S.C. 2019, approved July 1, 1971, as amended by Public Law 93-131 [H.R. 6628], 87 Stat. 460, approved October 19, 1973

JOINT RESOLUTION To authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages arising out of the hostilities of the Second World War, to provide for the payment of noncombat claims occurring prior to July 1, 1951, and to establish a Micronesian Claims Commission.

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands, formerly under League of Nations mandate to Japan, suffered from the hostilities of the Second World War; and

Whereas the United States, while not liable for wartime damages suffered by the Micronesians, has responsibility for the welfare of the Micronesian people as the administering authority of the Trust Territory of the Pacific Islands; and

Whereas the Governments of Japan and the United States entered into an agreement on April 18, 1969, to contribute ex gratia the equivalent of $10,0000,000 to the Micronesian inhabitants of the Trust Territory of the Pacific Islands in view of the suffering caused by the hostilities of the Second World War, each Government contributing the equivalent of $5,000,000, Japan's contribution to take the form of products and services; and

Whereas payment of these ex gratia contributions to certain Micronesian inhabitants of the Trust Territory of the Pacific Islands will meet a longstanding Micronesian grievance and will promote the welfare of the Micronesian people; and

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands claim to have suffered damage to or loss or destruction of property, personal injury, or death caused by military and civilian employees of the United States Government and arising out of accidents or incidents between the dates of the securing of the various islands of Micronesia by the United States Armed Forces and July 1, 1951, and within an area under the control of the United States at the time of the accident or incident; and

Whereas the United States is desirous of making an equitable settlement of these claims by way of a monetary contribution: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this resolution may be cited as the "Micronesian Claims Act of 1971".

TITLE I

Sec. 101. (a) It is the purpose of this title that, with respect to war claims, the United States should make the ex gratia contribution of $5,000,000 matching an equivalent contribution of the Government of Japan, to Micronesian inhabitants of the Trust Territory of the Pacific Islands who are determined by the Micronesian Claims Commission to be meritorious claimants, in particular amounts to be awarded by the Micronesian Claims Commission, and that the Secretary of the Interior, hereinafter referred to as the "Secretary", or his designee, shall pay to said Micronesian claimants as soon as possible following his receipt of the final report of the Micronesian Claims Commission on the claims allowed, such amounts as are finally certified pursuant to section 104 of this title.

(b)[1] A "Micronesian inhabitant of the Trust Territory of the Pacific Islands" is defined for the purposes of this Act as a person who—

(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen of the Trust Territory of the Pacific Islands, or is a citizen of the United States, as of the date of filing a claim; or

(2) if then living, would have been eligible to become a citizen of the Trust Territory of the Pacific Islands on July 18, 1947; or

(3) is the successor, heir, or assignee of a person eligible under paragraph (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands, or of the United States, as of the date of filing a claim.

Sec. 102. (a) There is hereby authorized to be appropriated to the Trust Territory of the Pacific Islands $5,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriations authorized by section 2 of the Act of June 30, 1954, as amended, to be paid into a "Micronesian Claims Fund". The Secretary is hereby authorized to create and manage said Micronesian Claims Fund.

(b) Funds approximating $5,000,000 appropriated to the Trust Territory of the Pacific Islands for supplies or capital improvements in accordance with the Act of June 30, 1954, as amended, shall be paid into a Micronesian Claims Fund as the products of Japan and the services of the Japanese people in the amount of one billion eight hundred million yen (currently computed at $5,000,000) are provided by Japan pursuant to article I of the "Agreement between the United States of America and Japan", signed April 18, 1969. These funds, together with the sum author-

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[1] Subsec. (b) was amended by sec. 1 of Public Law 93-131 (87 Stat. 460). The text formerly read:

"(b) A 'Micronesian inhabitant of the Trust Territory of the Pacific Islands' is defined for the purposes of this joint resolution as a person who:

"(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen as of the date of filing a claim; or

"(2) if then living, would have been eligible for citizenship on July 18, 1947; or

"(3) is the successor, heir, or assignee of a person eligible under paragraph (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands as of the date of filing a claim."

ized to be appropriated by subsection (a) of this section, shall constitute the whole of the Micronesian Claims Fund.

Sec. 103. (a) There is hereby established a Micronesian Claims Commission, hereinafter referred to as the "Commission", such Commission to be under the control and direction of the Chairman of the Foreign Claims Settlement Commission. The Commission shall be composed of five members, who shall be appointed, in consultation with the Secretary, by the Chairman of the Foreign Claims Settlement Commission, one of whom he shall designate as Chairman. Two members shall be selected from a list of Micronesian citizens nominated by the Congress of Micronesia. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of the original appointment. The members of the Commission shall serve at the pleasure of the Chairman of the Foreign Claims Settlement Commission. No Commissioner shall hold other public office or engage in any other employment during the period of his service on the Commission, except as an employee of the Foreign Claims Settlement Commission.

(b) The members of the Commission shall receive compensation and allowances as determined by the Chairman of the Foreign Claims Settlement Commission by application of the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event shall traveling and other expenses incurred in connection with their duties as members, or a per diem allowance in lieu thereof, exceed that prescribed in accordance with the provisions of subchapter 1 of chapter 57 of title 5, United States Code. The term of office of the members of the Commission shall expire at the time fixed in subsection (e) of this section for winding up the affairs of the Commission.

(c) The Commission may, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, appoint and fix the compensation and allowances of such officers, attorneys, and employees of the Commission as may be reasonably necessary for its proper functioning, which employees shall be in addition to those who may be assigned by the Chairman of the Foreign Claims Settlement Commission to assist the Commission in carrying out its functions. The compensation and allowances of employees appointed pursuant to this section shall be within the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event to exceed the amount of allowances prescribed in subchapter 1 of chapter 57 of title 5, United States Code. In addition, the Commission, with the approval of the Chairman of the Foreign Claims Settlement Commission, may make such expenditures as may be reasonably necessary to carry out its proper functioning. Officers and employees of any other department or agency of the Government of the United States or the government of the Trust Territory of the Pacific Islands may, with the consent of the head of such department or agency, with or without reimbursement, be assigned to assist the Commission in carrying out its functions. The Commission may, with the consent of the head of any other department or agency of the government of the United States or the government of the Trust Territory of the Pacific Islands, utilize, with or without reim-

bursement, the facilities and services of such department or agency in carrying out the functions of the Commission.

(d) The Commission shall, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, prescribe such rules and regulations as are necessary for carrying out its functions. As expeditiously as possible and, in any event, within three months of its appointment, the Commission shall give public notice in the Trust Territory of the Pacific Islands of the time when, and the limit of time within which, claims may be filed, which notice shall be given in such manner as the Commission shall prescribe: *Provided,* That the final date for the filing of claims shall not be more than one year after the appointment of the full membership of the Commission. The Commission shall give extensive publicity in the Trust Territory of the Pacific Islands to the provisions of this Act and shall make every effort to advise promptly all persons who may be entitled to file claims under the provisions of this Act administered by the Commission of their rights under such provisions, and to assist them in the preparation and filing of their claims. A majority of the membership of the Commission shall be necessary to transact business: *Provided, however,* That an affirmative vote of at least three members shall be required for the promulgation of rules and regulations, and for the final adjudication of any claim.

(e) The Commission shall wind up its affairs as expeditiously as possible and in any event not later than three years after the expiration of the time for filing claims under this Act.

Sec. 104. (a) The Commission shall have authority to receive, examine, adjudicate, and render final decisions, in accordance with the laws of the Trust Territory of the Pacific Islands and international law, with respect to (1) claims of the Micronesian inhabitants of the Trust Territory of the Pacific Islands who suffered loss of life, physical injury, and property damage directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by United States Armed Forces, and (2) those claims arising as postwar claims between the dates of the securing of the various islands of Micronesia by United States Armed Forces and July 1, 1951. The Commission shall notify all claimants of the approval or denial of their claims, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission or its representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. As claims are adjudicated, the Commissioner shall certify them to the Secretary for payment in such manner as he may direct.[2] The claims covered by title I of this Act

[2] This sentence was amended by sec. 2 of Public Law 93-131. This sentence formerly read: "When all claims have been adjudicated, the Commission shall certify them to the Secretary for payment.".

shall be paid from the Micronesian Claims Fund except that, as to claims based on death, up to $1,000 shall be paid immediately upon adjudication, and the claims covered by title II of this Act shall be paid by the Secretary from the funds appropriated for such purpose.

(b) No later than six months after its organization, and annually thereafter, the Commission shall make a report, through the Chairman of the Foreign Claims Settlement Commission, to the Congress of the United States concerning its operations under this Act. The Commission shall, upon winding up its work, certify to the Chairman of the Foreign Claims Settlement Commission, the Secretary, and to the Congress of the United States the following:

(1) A list of all claims allowed, in whole or in part, together with the amount of each claim and, the amount awarded thereon.

(2) A list of all claims disallowed.

(3) A copy of the decision rendered in each case.

(c) In the event that funds remain in the Micronesian Claims Fund after all allowable and adjudicated claims are paid, such remaining funds shall be transferred from the Micronesian Claims Fund to the Treasury of the Trust Territory of the Pacific Islands for appropriation by the Congress of Micronesia for the welfare of the people of the Trust Territory of the Pacific Islands. In the event that the allowable and adjudicated claims covered by title I of the Act exceed a total of $10,000,000, the Secretary shall make pro rata payments.

(d) No payment shall be made on an award of the Commission unless the claimant shall first execute a full release to the United States and Japan in respect to any alleged liability of the United States or Japan, or both, arising before the date of the securing of the various islands of Micronesia by the United States Armed Forces.

Sec. 105. There is authorized to be appropriated such sums as may be necessary for the operation and administrative expenses of the Foreign Claims Settlement Commission, to the extent needed to cover activity connected with this Act, and of the Commission in order to carry out the purposes of this Act.

Sec. 106. The agreement for the payment of the Micronesian claims covered by title I of this Act having been reached by negotiators of the Governments of the United States and Japan, and since personnel to be appointed by the Secretary or the Commission will be available to assist the people of the Trust Territory of the Pacific Islands insofar as may be necessary in filing all claims covered by either title I or title II of this Act, no remuneration on account of services rendered on behalf of any claimant, or any association of claimants, in connection with any claim or claims covered by either title I or title II shall exceed, in total, 1 per centum of the amount paid on such claim or claims, pursuant to the provisions of this Act. Fees already paid for such services shall be deducted from the amount authorized by this Act. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor and, upon convic-

tion thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

TITLE II

Sec. 201. For the purpose of promoting and maintaining friendly relations by the final settlement of meritorious postwar claims, the Micronesian Claims Commission is, pursuant to authority granted in section 104(a) of title I, authorized to consider, ascertain, adjust, determine, and make payments, where accepted by the claimant in full satisfaction and in final settlement, of all claims by Micronesian inhabitants against the United States or the government of the Trust Territory of the Pacific Islands on account of personal injury or death or damage to or loss or destruction of private property, both real and personal, of Micronesian inhabitants of the former Japanese mandated islands, now the Trust Territory of the Pacific Islands administered by the United States under a trusteeship agreement with the United Nations, including claims for a taking or for use or retention of such property where no payments or inadequate payments have been made for such taking, use, or retention when such damage, loss, or destruction was caused by the United States Army, Navy, Marine Corps, or Coast Guard, or individual members thereof, including military personnel and United States Government civilian employees, and including employees of the Trust Territory government acting within the scope of their employment: *Provided,* That only those claims shall be considered by the Commission which are presented in writing as provided for in section 103(d) of title I of this Act and the accident or incident out of which the claim arose occurred prior to July 1, 1951, within the islands which now comprise the Trust Territory of the Pacific Islands and within an area under the control of the United States at the time of the accident or incident: *Provided further,* That any such settlements made by such Commission and any such payments made by the Secretary under the authority of title I or title II shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary and not subject to review.

Sec. 202. There is hereby authorized to be appropriated the amount of $20,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriation authorized by section 2 of the Act of June 30, 1954, as amended, to be expended by the Secretary for the purposes of making payments to the extent authorized by this title of this Act.

Sec. 203. Any funds appropriated for the purposes of this title which remain after the settlement of claims under the provisions of this title shall be covered into the Treasury of the United States.

(1) Civil Government for the Trust Territory of the Pacific Islands

Public Law 83–451 [S. 3318], 68 Stat. 330, 48 U.S.C. 1681 note, approved June 30, 1954, as amended by Public Law 87–541 [S. 2775], 76 Stat. 171, approved July 19, 1962; Public Law 88–487 [H.R. 3198], 78 Stat. 601, approved August 22, 1964; Public Law 90–16 [S. 303], 81 Stat. 15, approved May 10, 1967; Public Law 90–617 [S. 3207], 82 Stat. 1213, approved October 21, 1968; Public Law 91–578 [S. 3479], 84 Stat. 1559, approved December 24, 1970; Public Law 91–606 [S. 3619], 84 Stat. 1744, approved December 31, 1970; and by Public Law 93–111 [S. 1385], 87 Stat. 354, approved September 21, 1973; Public Law 94–27 [S. 326], 89 Stat. 95, approved May 28, 1975; Public Law 94–255 [H.R. 12122], 90 Stat. 299, approved April 1, 1976; Public Law 95–134 [H.R. 6550], 91 Stat. 1159, approved October 15, 1977; and by Public Law 96–205 [H.R. 3756], 94 Stat. 84, approved March 12, 1980

AN ACT To provide for a continuance of civil government for the Trust Territory of the Pacific Islands.

Whereas, pursuant to the authority of Public Law 204, Eightieth Congress, approved July 18, 1947, the President approved a trusteeship agreement for the Trust Territory of the Pacific Islands between the United States Government and the Security Council of the United Nations; and

Whereas responsibility for civil administration of the Trust Territory was vested in the Secretary of the Navy by Executive Order Numbered 9875 of July 18, 1947; and

Whereas responsibility for such administration was transferred to the Secretary of the Interior, effective July 1, 1951, by Executive Order Numbered 10265 of June 29, 1951, as amended by Executive Order Numbered 10408 of November 10, 1952, and Executive Order Numbered 10470 of July 17, 1953: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a) That until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such a manner and through such agency or agencies as the President of the United States may direct or authorize.

(b)[1] The head of any department, corporation, or other agency of the executive branch of the Government may, upon the request of the Secretary of the Interior, extend to the Trust Territory of the Pacific Islands, with or without reimbursement, scientific, technical, and other assistance under any program administered by such agency, or extend to the Trust Territory any Federal program administered by such agency if the assistance or program will promote the welfare of the Trust Territory, notwithstanding any provision of law under which the Trust Territory may otherwise be ineligible for the assistance or program: *Provided,* That the Secretary

[1] Subsec. (6) added by sec. 1 of Public Law 88–487 (78 Stat. 601).

of the Interior shall not request assistance pursuant to this subsection that involves, in the aggregate, an estimated nonreimbursable cost in any one fiscal year in excess of $150,000: *Provided further,* That the cost of any program extended to the Trust Territory under this subsection shall be reimbursable out of appropriations authorized and made for the government of the Trust Territory pursuant to section 2 of this Act, as amended. The provisions of this subsection shall not apply to financial assistance under a grant-in-aid program.

Sec. 2.[2] There are authorized to be appropriated not to exceed $25,000,000 for fiscal year 1967, for fiscal year 1975, $75,000,000; for fiscal year 1976, $80,000,000; for the period beginning July 1, 1976, and ending September 30, 1976, $15,100,000; for fiscal year 1977, $80,000,000; and such amounts as were authorized but not appropriated for fiscal years 1975, 1976, and 1977; for fiscal year 1978, $90,000,000; for fiscal year 1979, $122,700,000; for fiscal year 1980, $112,000,000; for fiscal years after fiscal 1980, such sums as may be necessary, including, but not limited to, sums needed for completion of the capital improvement program, for a basic communications system, and for a feasibility study and construction of a hydroelectric project on Ponape; and up to but not to exceed $8,000,000 for the construction of such buildings as are required for a four-year college to serve the Micronesian community (no appropriations for the construction of such buildings shall, however, be made (A) until, but not later than one year after the date of the enactment of this Act, the President causes a study to be made by an appropriate authority to determine the educational need and the most suitable educational concept for such a college and transmits such study, together with his recommendations, to the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States within said one year period and (B) until 90 calendar days after the receipt of such study and recommendations which shall be deemed approved unless specifically disapproved by resolution of either such committee), and $1,800,000 for a human development project in the Marshall Islands plus such sums as are necessary, for each of such fiscal years, or periods, to offset reductions in, or the termination of Federal grants-in-aid programs or other funds made available to the Trust Territory of the Pacific Islands by other Federal agencies, to remain available until expended, to carry out the provisions of this Act and to provide for a program of necessary capital improvements and public works related to health, education, utilities, highways, transportation facilities, communications, and public buildings: *Provided,* That except for funds appropriated for the activities of the Peace Corps no funds appropriated by any Act shall be used for administration of the Trust Territory of the Pacific Islands except as may be specifically authorized by law.

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[2] The language in sec. 2 concerning the authorization of funds after fiscal year 1980 was added by sec. 101 of Public Law 96-205 (94 Stat. 84). Sec. 2 had previously been amended by Public Law 90-16 (81 Stat. 15), Public Law 90-617 (82 Stat. 1213), Public Law 91-578 (84 Stat. 1559), Public Law 93-111 (87 Stat. 354), Public Law 94-27 (89 Stat. 95), Public Law 94-255 (90 Stat. 299), and Public Law 95-134 (91 Stat. 1159).

Sec. 3.[3] There are hereby authorized to be appropriated such sums as the Secretary of the Interior may find necessary, but not to exceed $10,000,000 for any one year, to alleviate suffering and damage resulting from major disasters that occur in the Trust Territory of the Pacific Islands. Such sums shall be in addition to those authorized in section 2 of this Act and shall not be subject to the limitations imposed by section 2 of this Act. The Secretary of the Interior shall determine whether or not a major disaster has occurred in accordance with the principles and policies of section 102(1) of the Disaster Relief Act of 1970.

Sec. 4.[4] (a) The government comptroller for Guam appointed pursuant to the provisions of section 9–A of the Organic Act of Guam shall, in addition to the duties imposed on him by such Act, carry out, on and after the date of the enactment of this section, the duties set forth in this section with respect to the government of the Trust Territory of the Pacific Islands. In carrying out such duties, the comptroller shall be under the general supervision of the Secretary of the Interior and shall not be a part of any executive department in the government of the Trust Territory of the Pacific Islands. The salary and expenses of the comptroller's office shall, notwithstanding the provisions of subsection (a) of section 9–A of the Organic Act of Guam, be apportioned equitably by the Secretary of the Interior between Guam and the Trust Territory of the Pacific Islands from funds available to Guam and the Trust Territory.

(b) The government comptroller shall audit all accounts and review and recommend adjudication of claims pertaining to the revenue and receipts of the government of the Trust Territory of the Pacific Islands and of funds derived from bonds issues; and he shall audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of the Trust Territory of the Pacific Islands including those pertaining to trust funds held by such government.

(c) It shall be the duty of the government comptroller to bring to the attention of the Secretary of the Interior and the High Commissioner of the Trust Territory of the Pacific Islands all failures to collect amounts due the government, and the expenditures of funds or uses of property which are irregular or not pursuant to law. The audit activities of the government comptroller shall be directed so as to (1) improve the efficiency and economy of programs of the government of the Trust Territory of the Pacific Islands, and (2) discharge the responsibility incumbent upon the Congress to insure that the substantial Federal revenues which are covered into the treasury of such government are properly accounted for and audited.

(d) The decisions of the government comptroller shall be final except that appeal therefrom may, with the concurrence of the High Commissioner, be taken by the party aggrieved or the head of the department concerned, within one year from the date of the de-

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[3] Sec. 3 was added by sec. 2 of Public Law 90–617 (82 Stat. 1213). Sec. 301(k) of Public Law 91–606 (84 Stat. 1759), inserted the phrase "section 102(1) of the Disaster Relief Act of 1970" for the phrase "section 2 of the Act of September 30, 1950 (64 Stat. 1109), as amended (42 U.S.C. 1855a)".

[4] Sec. 4 was added by sec. 2 of Public Law 93–111 (87 Stat. 354).

cision, to the Secretary of the Interior, which appeal shall be in writing and shall specifically set forth the particular action of the government comptroller to which exception is taken, with the reasons and the authorities relied upon for reversing such decision.

(e) If the High Commissioner does not concur in the taking of an appeal to the Secretary, the party aggrieved may seek relief by suit in the District Court of Guam, if the claim is otherwise within its jurisdiction. No later than thirty days following the date of the decision of the Secretary of the Interior, the party aggrieved or the High Commissioner, on behalf of the head of the department concerned, may seek relief by suit in the District Court of Guam, if the claim is otherwise within its jurisdiction.

(f) The government comptroller is authorized to communicate directly with any person or with any department officer or person having official relation with his office. He may summon witnesses and administer oaths.

(g) As soon after the close of each fiscal year as the accounts of said fiscal year may be examined and adjusted, the government comptroller shall submit to the High Commissioner and the Secretary of the Interior an annual report of the fiscal condition of the government, showing the receipts and disbursements of the various departments and agencies of the government. The Secretary of the Interior shall submit such report along with his comments and recommendations to the President of the Senate and the Speaker of the House of Representatives.

(h) The government comptroller shall make such other reports as may be required by the High Commissioner, the Comptroller General of the United States, or the Secretary of the Interior.

(i) The officer and activities of the government comptroller pursuant to this section shall be subject to review by the Comptroller General of the United States, and reports thereon shall be made by him to the High Commissioner, the Secretary of the Interior, the President of the Senate and the Speaker of the House of Representatives.

(j) All departments, agencies, and establishments shall furnish to the government comptroller such information regarding the powers, duties, activities, organizations, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the government comptroller, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department, agency, or establishment.

(2) Trust Territory Economic Development Loan Fund

Public Law 92-257 [S. 860], 86 Stat. 87; 48 U.S.C. 1688-1692, approved March 21, 1972

AN ACT Relating to the Trust Territory of the Pacific Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. For the purpose of promoting economic development in the Trust Territory of the Pacific Islands, there is authorized to be appropriated to the Secretary of the Interior, for payment to the government of the Trust Territory of the Pacific Islands as a grant in accordance with the provisions of this title, an amount which when added to the development fund established pursuant to section 3 of the Act of August 22, 1964 (78 Stat. 601), as augmented by subsequent Federal grants, will create a total fund of $5,000,000, which shall thereafter be known as the Trust Territory Economic Development Loan Fund.

Sec. 2. The grant authorized by section 1 shall be made only after the government of the Trust Territory of the Pacific Islands has submitted to the Secretary of the Interior a plan for the use of the grant, and the plan has been approved by the Secretary. The plan shall provide among other things for a revolving fund to make loans or to guarantee loans to private enterprise. The term of any loan made pursuant to the plan shall not exceed twenty-five years.

Sec. 3. No loan or loan guarantee shall be made under this title to any applicant who does not satisfy the territorial administering agency that financing is otherwise unavailable on reasonable terms and conditions. No loan or loan guarantee shall exceed (1) the amount which can reasonably be expected to be repaid, (2) the minimum amount necessary to accomplish the purposes of this title, or 25 per centum of the funds appropriated pursuant to section 1. No loan guarantee shall guarantee more than 90 per centum of the outstanding amount of any loan, and the reserves maintained to guarantee the loan shall not be less than 25 per centum of the guarantee.

Sec. 4. The plan provided for in section 2 shall set forth such fiscal control and accounting procedures as may be necessary to assure proper disbursement, repayment, and accounting for such funds.

Sec. 5. The High Commissioner of the Trust Territory of the Pacific Islands shall make an annual report to the Secretary of the Interior on the administration of this title.

Sec. 6. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any relevant books, documents, papers, or records of the government of the Trust Territory of the Pacific Islands.

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d. Czechoslovakian Claims Settlement Act of 1981 [1]

Public Law 97-127 [S. 1946], 95 Stat. 1675, approved December 29, 1981

AN ACT To provide for the final settlement of certain claims against Czechoslovakia, and for other purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Czechoslovakian Claims Settlement Act of 1981".

APPROVAL OF AGREEMENT

Sec. 2. (a) The Congress hereby approves the Agreement between the Government of the United States of America and the Government of the Czechoslovak Socialist Republic on the Settlement of Certain Outstanding Claims and Financial Issues, initiated at Prague, Czechoslovakia on November 6, 1981.

(b) The President may, without further approval by the Congress, execute such technical revisions of the Agreement approved by subsection (a) of this section as in his judgment may from time to time be required to facilitate the implementation of that Agreement. Nothing in this subsection shall be construed to authorize any revision of that Agreement to reduce any amount to be paid by the Government of the Czechoslovak Socialist Republic to the United States Government under the Agreement, or to defer the payment of any such amount.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) "Agreement" means the Agreement on the Settlement of Certain Outstanding Claims and Financial Issues approved by section 2(a) of this Act;

(2) "national of the United States" has the meaning given such term by section 401(1) of the International Claims Settlement Act of 1949; [2]

(3) "Commission" means the Foreign Claims Settlement Commission of the United States;

(4) "Fund" means the Czechoslovakian Claims Fund established by section 402(b) of the International Claims Settlement Act of 1949;

(5) "Secretary" means the Secretary of the Treasury; and

(6) "property" means any property, right, or interest.

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[1] 22 U.S.C. note prec. 1642. See also title IV of the International Claims Settlement Act of 1949 (Public Law 81-455; page 982) for additional legislation on claims against Czechoslovakia.

[2] For text, see page 982.

THE FUND

Sec. 4. (a) The Secretary shall cover into the Fund the amount paid by the Government of the Czechoslovak Socialist Republic in settlement and discharge of claims of nationals of the United States pursuant to article 1(1) of the Agreement, and shall deduct from that amount $50,000 for reimbursement to the United States Government for expenses incurred by the Department of the Treasury and the Commission in the administration of this Act and title IV of the International Claims Settlement Act of 1949. The amount so deducted shall be covered into the Treasury to the credit of miscellaneous receipts. The deduction required by this subsection shall be made in lieu of the deduction provided in section 402(e) of the International Claims Settlement Act of 1949;[3] however, it is the sense of the Congress that the United States Government is entitled to a larger percentage of the total award (generally presumed to be 5 percent) and that the ex gratia payment hereinafter provided to certain claimants, who were otherwise excluded from sharing in this claims settlement under generally-accepted principles of international law and United States practice, is justified only by the extraordinary circumstances of this case and does not establish any precedent for future claims negotiations or payments.

(b) The Secretary shall establish three accounts in the Fund into which the amount covered into the Fund pursuant to subsection (a) of this section, less the deduction required by that subsection, shall be covered as follows:

(1) An account into which $74,550,000 shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards certified pursuant to section 410 of the International Claims Settlement Act of 1949.[4]

(2) An account into which $1,500,000 shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards determined pursuant to section 5 of this Act.

(3) An account into which the remainder of amounts in the Fund shall be covered, to be available for payment in accordance with section 8 of this Act on account of awards determined pursuant to section 6 of this Act.

DETERMINATION OF CERTAIN CLAIMS

Sec. 5. (a) The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and the date on which the Agreement enters into force. In making the determination with respect to the validity and amount of any such claim and the value of the property taken, the Com-

[3] For text, see page 983.
[4] For text, see page 986.

mission is authorized to accept the fair or proved value of such property as of the time when the property taken was last operated, used, managed, or controlled by the national or nationals of the United States asserting the claim, regardless of whether such time is prior to the actual date of nationalization or other taking by the Government of the Czechoslovak Socialist Republic.

(b) The Commission shall certify to the Secretary the amount of any award determined pursuant to subsection (a).

DETERMINATION OF OTHER CLAIMS

Sec. 6. (a)(1) The Congress finds that—

(A) in the case of certain persons holding claims against the Czechoslovakian Government who became nationals of the United States by February 26, 1948, the date on which the current Communist Government of Czechoslovakia assumed power; and

(B) while the Commission had the authority to deny those claims described in subparagraph (A) on the basis that the properties involved had been taken by the Benes Government while the claimants were not yet nationals of the United States, the effect of that denial is to withhold compensation to persons who have been United States citizens for many years and whose expropriated property has benefited the Communist Government of Czechoslovakia no less than properties expropriated more directly and clearly by the Communist Government.

(2)(A) It is therefore the purpose of this section, in accordance with the intent of the Congress in enacting title IV of the International Claims Settlement Act of 1949 and in the interests of equity, to make ex gratia payments to the claimants described in paragraph (1) of this subsection.

(B) The Congress reaffirms the principle and practice of the United States to seek compensation from foreign governments on behalf only of persons who were nationals of the United States at the time they sustained losses by the nationalization or other taking of their property by those foreign governments. In making payments under this section, the Congress does not establish any precedent for future claims payments.

(b) The Commission shall reopen and redetermine the validity and amount of any claim against the Government of Czechoslovakia which was filed with the Commission in accordance with the provisions of title IV of the International Claims Settlement Act of 1949,[5] which was based on property found by the Commission to have been nationalized or taken by the Government of Czechoslovakia on or after January 1, 1945, and before February 26, 1948, and which was denied by the Commission because such property was not owned by a person who was a national of the United States on the date of such nationalization or taking. The provisions of section 405 of the International Claims Settlement Act of 1949 requiring that the property upon which a claim is based must have been owned by a national of the United States on the date of na-

[5] For text, see page 982.

tionalization or other taking by the Government of Czechoslovakia shall be deemed to be met if such property was owned on such date by a person who became a national of the United States on or before February 26, 1948. The Commission shall certify to the Secretary the amount of any award determined pursuant to this subsection.

PROCEDURES

Sec. 7. (a) The provisions of sections 401, 403, 405, 406, 407, 408, 409, 414, 415, and 416 of the International Claims Settlement Act of 1949,[6] to the extent that such provisions are not inconsistent with this Act, together with such regulations as the Commission may prescribe, shall apply with respect to any claim determined pursuant to section 5(a) of this Act or redetermined pursuant to section 6(b) of this Act.

(b) Not later than sixty days after the date of the enactment of this Act, the Commission shall establish and publish in the Federal Register a period of time within which claims described in section 5 of the Act must be filed with the Commission, and the date for the completion of the Commission's affairs in connection with the determination of those such claims and claims described in section 6 of this Act. Such filing period shall be not more than one year after the date of such publication in the Federal Register, and such completion date shall be not more than two years after the final date for the filing of claims under section 5. No person holding a claim to which section 6 of this Act applies shall be required to refile that claim before the Commission makes the redetermination required by that section.

PAYMENT OF AWARDS

Sec. 8. (a) As soon as practicable after the date of the enactment of this Act, the Secretary shall make payments from amounts in the account established pursuant to section 4(b)(1) of this Act on the unpaid balance of each award certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.[4]

(b) As soon as practicable after the Commission has completed the certification of awards pursuant to section 5(b) of this Act, the Secretary shall make payments on account of each such award from the amounts in the account established pursuant to section 4(b)(2) of this Act.

(c) As soon as practicable after the Commission has completed the certification of awards pursuant to section 6(b) of this Act, the Secretary shall make payments on account of each such award from the amounts in the account established pursuant to section 4(b)(3) of this Act.

(d) In the event that—

(1) the amounts in the account established pursuant to section 4(b)(2) of this Act exceed the aggregate total of all awards certified by the Commission pursuant to section 5(b) of this Act, or

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[4] For text, see pages 982-987.

(2) the amounts in the account established pursuant to section 4(b)(3) of this Act exceed the aggregate total of all awards certified by the Commission pursuant to section 6(b) of this Act,

the Secretary shall cover such excess amounts into the account established pursuant to section 4(b)(1) of this Act. The Secretary shall make payments pursuant to subsection (a) of this section, from such excess amounts, on the unpaid balance of awards certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949.[4]

(e) Payments under this section shall be made on the unpaid balance of each award which bear to such unpaid balance the same proportion as the total amount in the account in the Fund from which the payments are made bears to the aggregate unpaid balance of all awards payable from that account. Payments under this section, and applications for such payments, shall be made in accordance with such regulations as the Secretary may prescribe.

(f) In the event that—

(1) the Secretary is unable, within three years after the date of the establishment of the account prescribed by section 4(b)(1) of this Act, to locate any person entitled to receive payment under this section on account of an award certified by the Commission pursuant to section 410 of the International Claims Settlement Act of 1949[4] or to locate any lawful heirs, successors, or legal representatives of that person, or if no valid application for payment is made by or on behalf of that person within six months after the Secretary has located that person or that person's heirs, successors, or legal representatives; or

(2) within six months after the Commission has completed the certification of awards pursuant to sections 5(b) and 6(b) of this Act, no valid application for payment is made by or on behalf of any person entitled to receive payment under this section on account of an award certified by the Commission pursuant to either such section,

the Secretary shall give notice by publication in the Federal Register and in such other publications as the Secretary may determine that, unless valid application for payment is made within sixty days after the date of such publication, that person's award under title IV of the International Claims Settlement Act of 1949[5] or this Act, as the case may be, and that person's right to receive payment on account of such award, shall lapse. Upon the expiration of such sixty-day period that person's award and right to receive payment shall lapse, and the amounts payable to that person shall be paid pro rata by the Secretary on account of all other awards under title IV of the International Claims Settlement Act of 1949[5] or this Act, as the case may be.

INVESTMENT OF FUNDS

Sec. 9. The Secretary shall invest and hold in separate accounts the amounts held respectively in the accounts established by section 4 of this Act. Such investment shall be in public debt securities with maturities suitable for the needs of the separate accounts

and bearing interest at rates determined by the Secretary, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest earned on the amounts in each account established by section 4 of this Act shall be used to make payments, in accordance with section 8(e) of this Act, on awards payable from that account.

IMPLEMENTATION OF AGREEMENT

Sec. 10. (a) If, within sixty days after the date of the enactment of this Act—

(1) the Government of the Czechoslovak Socialist Republic does not make the payments to the United States Government described in article 6(2) of the Agreement, or

(2) the Czechoslovak Government does not receive the gold provided in article 6(1) of the Agreement,

the provisions of this Act shall cease to be effective, and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that sixty-day period.

(b) The sixty-day period for implementation of the Agreement required by subsection (a) shall be extended by an additional period of thirty calendar days if, before the expiration of that sixty-day period, the Secretary of State certifies in writing that such extension is consistent with the purposes of this Act, and reports that certification to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate, together with a detailed statement of the reasons for the extension. If at the end of that additional thirty-day period the events set forth in paragraphs (1) and (2) of subsection (a) have not occurred, the provisions of this Act shall cease to be effective and the provisions of the Agreement may not be implemented unless the Congress approves the Agreement after the end of that thirty-day period or unless, before the expiration of that thirty-day period, authorizes by joint resolution a further extension of time for implementation of the Agreement. Such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976,[7] and in the House of Representatives a motion to proceed to the consideration of such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged.

SOCIAL SECURITY AGREEMENT

Sec. 11. The Secretary of State shall conduct a detailed review of the exchange of letters between the United States and Czechoslovakia providing for reciprocal social security payments to residents of the two countries. Such review should include an examination of the extent to which Czechoslovakia is complying with the spirit and provisions of the letters, a comparison of the benefits being realized by residents of Czechoslovakia and of the United States under the letters, and an evaluation of the basis of differences in

[7] For text, see page 308, vol. I.

such benefits. The Secretary of State, in consultation with the Department of Health and Human Services, shall report to the Congress, not later than six months after the date of the enactment of this Act, the results of such review, together with any recommendations for legislation or changes in the agreement made by the letters that may be necessary to achieve greater comparability and equity of benefits for the residents of the two countries. Such report should include specific assessments of the feasibility, likely effects, and advisability of terminating United States social security payments to residents of Czechoslovakia in response to inequities and incomparabilities of benefits payments under the exchange of letters.

4. Registration of Foreign Agents

a. The Foreign Agents Registration Act of 1938, as amended [1]

PART I—REGISTRATION OF FOREIGN PROPAGANDISTS

Public Law 75-583 [H.R. 1591], 52 Stat. 631; 22 U.S.C. 611-621, approved June 8, 1938, as amended by Public Law 76-319 [H.R. 5988], 53 Stat. 1244, approved August 7, 1939; Public Law 77-532 [S. 2399], 56 Stat. 248, approved April 29, 1942; Public Law 81-642 [H.R. 4386], 64 Stat. 399, approved August 3, 1950; Public Law 82-414 [H.R. 5678], 66 Stat. 163 at 276, approved June 27, 1952; Public Law 87-366 [H.R. 470], 75 Stat. 784, approved October 4, 1961; Public Law 89-486 [S. 693], 80 Stat. 244, approved July 4, 1966; and by Public Law 91-375 [H.R. 17070], 84 Stat. 719 at 782, approved August 12, 1970

AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy and purpose of this Act to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in light of their associations and activities.[2]

Section 1. Definitions.[3]—As used in and for the purposes of this Act—

(a) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

(b)[4] The term "foreign principal" includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

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[1] 22 U.S.C. 611-621. The Foreign Agents Registration Act of 1938, as amended, will be referred to as the FAR Act and "this Act" in footnotes.

[2] Declaration of policy and purpose added by the act of Apr. 29, 1942 (56 Stat. 248).

[3] The act of Aug. 7, 1939 (53 Stat. 1244); the act of Jan. 24, 1942 (56 Stat. 248), and the act of July 4, 1966 (80 Stat. 244), generally redefined the terms of the act.

[4] This term was reduced in scope by Public Law 89-486 (80 Stat. 244).

(3) a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c)[5] Except as provided in subsection (d) hereof, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages with the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

(d)[6] The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of title 39 published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in section 1(b) hereof, or by any agent of a foreign principal required to register under this Act;

(e)[7] The term "government of a foreign country" includes any person or group of persons exercising sovereign *de facto* or *de jure*

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[5] As amended and restated by Public Law 89-486 (80 Stat. 244), with former secs. (c)(3) and (c)(4) deleted. Former subsec. (c)(5) inserted by the act of Sept. 23, 1950 (64 Stat. 1005), was deleted by the act of Aug. 1, 1956 (70 Stat. 899), and is now covered by 50 U.S.C. 851-858 (1964).

[6] Subsecs. (d) and (g) were added by the act of Apr. 29, 1942 (56 Stat. 248), and amended by Public Law 89-486 (80 Stat. 244).

[7] Subsecs. (d) through (n) were added by the act of Apr. 29, 1942 (56 Stat. 248).

political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

(f)[7] The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof;

(g)[6] The term "public-relations counsel" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal;

(h)[7] The term "publicity agent" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

(i)[7] The term "information-service employee" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(j)[7] The term "political propaganda" includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this section 1(j) the term "dis-

seminating" includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;

(k)[7] The term "registration statement" means the registration statement required to be filed with the Attorney General under section 2(a) hereof, and any supplements thereto required to be filed under section 2(b) hereof, and includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

(l)[7] The term "American republic" includes any of the States which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;[8]

(m)[7] The term "United States," when used in a geographical sense includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;[9]

(n)[7] The term "prints" means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter.

(o)[10] The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

(p)[10] The term "political consultant" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party;

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[8] The act of Habana, E.A.S. Doc. No. 199 is found in 54 Stat. 2491. The 21 signatories thereto were: Honduras, Haiti, Costa Rica, Mexico, Argentina, Uruguay, Ecuador, Bolivia, Chile, Brazil, Cuba, Paraguay, Panama, Colombia, Venezuela, El Salvador, Dominican Republic, Peru, Nicaragua, Guatemala, United States of America.

[9] Pursuant to Proc. No. 2695, 11 F.R. 7517, 60 Stat. 1352, granting independence to the Philippines, words "including the Philippine Islands" were deleted from the definition of the United States.

[10] Subsecs. (o) through (q) were added by the act of July 4, 1966, 80 Stat. 244.

(q)[10] For the purpose of section (3)(d) hereof, activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic person engaged in substantial commercial, industrial or financial operations in the United States shall not be deemed to serve predominantly a foreign interest because such activities also benefit the interests of a foreign person engaged in bona fide trade or commerce which is owned or controlled by, or which owns or controls, such domestic person: *Provided,* That (i) such foreign person is not, and such activities are not directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in substantial part by, a government of a foreign country or a foreign political party, (ii) the identity of such foreign person is disclosed to the agency or official of the United States with whom such activities are conducted, and (iii) whenever such foreign person owns or controls such domestic person, such activities are substantially in furtherance of the bona fide commercial, industrial or financial interests of such domestic person.

Sec. 2. Registration.—(a)[11] No person shall act as an agent of a foreign principal unless he has filed with the Attorney General[12] a true and complete registration statement and supplements thereto as required by this section 2(a) and section 2(b) hereof or unless he is exempt from registration under the provisions of this Act. Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal. The registration statement shall include the following which shall be regarded as material for the purposes of this Act:

(1)[13] Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2)[13] Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto;

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[11] This section was reworded by the act of July 4, 1966 (80 Stat. 244 at 245). It was previously amended and restated by Public Law 81-642 (64 Stat. 400).

[12] Pursuant to sec. 2 of the act of Apr. 29, 1942 (56 Stat. 251), and by virtue of Executive Order 9176, effective June 1, 1942, registration functions under this Act were transferred from the Secretary of State to the Attorney General. Under 18 U.S.C. 951 it is a criminal offense for one, other than a diplomatic or consular officer, to act as a foreign agent without prior notification to the Secretary of State.

[13] Pars. (1) through (11) of subsec. (a) were added by the act of Apr. 29, 1942 (56 Stat. 249), in order to provide detailed appraisal as to the comprehensive information required in the registration statement. The latter act also extended the registration provisions so as to require disclosure of all activities of the registrant, that "as agent" and those "for himself".

a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

(3)[13] A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each; unless, and to the extent, this requirement is waived in writing by the Attorney General; the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal;

(4)[13] Copies of each written agreement, and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity;

(5)[13] The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6)[13] A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder, including a detailed statement of any such activity which is a political activity;[14]

(7)[13 15] The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of con-

[14] The words "including a detailed statement of any such activity which is a political activity" were added by act of July 4, 1966, 80 Stat. 244, 245.

[15] This paragraph was amended by act of July 4, 1966, 80 Stat. 244, 245–246.

tributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8)[15] A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as a agent of a foreign principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of Title 18, United States Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

(9)[13] Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10)[13] Such other statements, information, or documents pertinent to the purposes of this Act as the Attorney General, having due regard for the national security and the public interests, may from time to time require;

(11)[13] Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b)[16] Every agent of a foreign principal who has filed a registration statement required by section 2(a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), and (9) of section 2(a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case,

[16] Subsecs. (b), (d), and (e) amended and restated by Public Law 77-352 (56 Stat. 248).

require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d)[16] The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e)[16] If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of the Act of October 17, 1940 (54 Stat. 1201),[17] the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of the Act of October 17, 1940 (54 Stat, 1201).[17]

(f)[18] The Attorney General may, by regulation, provide for the exemption—

(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act.

Sec. 3.[19] **Exemptions.**—The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

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[17] Now covered by 18 U.S.C. 2386, formerly contained in 18 U.S.C. 14–18.

[18] Subsec. (f) was added by act of July 4, 1966 (80 Stat. 244, 246).

[19] Exemption provisions of this act were amended by the act of Apr. 29, 1942, 56 Stat. 248, and by the act of July 4, 1966 (80 Stat. 244, 246).

(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

(d)[20] Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 4),[21] and such rules and regulations as may be prescribed thereunder;

(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while, (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such

[20] Subsec. (d) was amended by the act of Oct. 4, 1961 (75 Stat. 784), and by the act of July 4, 1966 (80 Stat. 244, 246).

[21] 22 U.S.C. 441, 444, 445, 447–451, 453–457.

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person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to, and retention for the duration of this Act by, the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the government of which such person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee;[22]

(g)[23] Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided,* That for the purpose of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal.

Sec. 4.[24] Filing and Labeling of Political Propaganda.—(a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons, unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth the relationship or connection between the person trans-

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[22] By letter dated Sept. 30, 1946, the President withdrew from consideration all countries previously designated as entitled to the exemption provided by sec. 3(f).

[23] Subsec. (g) was added by the act of July 4, 1966 (80 Stat. 244, 246).

[24] This provision was added by the act of Apr. 29, 1942 (56 Stat. 248, 254-5), and as amended by the act of July 4, 1966 (80 Stat. 244, 246), and provides that two copies of the political propaganda are to be filed with the Attorney General. Originally, sec. 4 had related to retention of statements as public records, a provision which was incorporated into sec. 6 by the 1942 act

mitting the political propaganda or causing it to be transmitted and such propaganda; that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of such foreign principal; that, as required by this Act, his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

(c)[25] The copies of political propaganda required by this Act to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688),[26] and of all foreign prints excluded from the mails under authority of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230).[27]

Notwithstanding the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688),[26] and of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230),[27] the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e)[28] It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this Act to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the

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[25] Subsec. (c) was amended by the act of July 4, 1966 (80 Stat. 244 at 247), to provide that the political propaganda filed with the Attorney General shall be available for public inspection.
[26] 19 U.S.C. 1305 (1970).
[27] 18 U.S.C. 1717 (1970).
[28] Subsecs. (e) and (f) were added by the act of July 4, 1966 (80 Stat. 244 at 247).

propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

(f)[28] Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony.

Sec. 5.[29] Books and Records.—Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

Sec. 6.[30] Public Examination of Official Record.—The Attorney General shall retain in permanent form one copy of all registration statements and all statements concerning the distribution of political propaganda furnished under this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statement of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this Act.

(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign

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[29] Sec. 5 was amended and restated by the act of Apr. 29, 1942 (56 Stat. 248), with the phrase "in accordance with such business and accounting practices" added by Public Law 89-486 (80 Stat. 244).

[30] Subsec. (a) was amended and restated by the act of Apr. 29, 1942 (56 Stat. 248). Subsecs. (b) and (c) were added by Public Law 89-486 (80 Stat. 244).

relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

(c) The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof, copies of political propaganda, or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act.

Sec. 7.[31] **Liability of Officers.**—Each officer, or person performing the functions of an officer, and each director or person performing the functions of a director, of an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute and file a registration statement and supplements thereto as and when such filing is required under sections 2(a) and 2(b) hereof and shall also be under obligation to cause such agent to comply with all the requirements of sections 4(a), 4(b), and 5 and all other requirements of this Act. Dissolution of any organization acting as an agent of a foreign principal shall not relieve any officer, or person performing the functions of an officer, or any director, or person performing the functions of a director, from complying with the provisions of this section. In case of failure of any such agent of a foreign principal to comply with any of the requirements of this Act, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

Sec. 8.[32] **Enforcement and Penalties.**—(a) Any person who—

(1) willfully violates any provisions of this Act or any regulations thereunder, or

(2) in any registration statement or supplement thereto or in any statement under section 4(a) hereof concerning the distribution of political propaganda or in any other documents filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, except that in case of a violation of subsection (b), (e), or (f) of section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than $5,000 or imprisonment for not more than six months, or both.[33]

(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign

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[31] Sec. 7 was amended and restated by the act of Apr. 29, 1942; further amended and restated by sec. 2 of Public Law 81-642 (64 Stat. 400).

[32] Sec. 8 was added by the act of Apr. 29, 1942 (56 Stat. 248).

[33] The exception provision was added by sec. 7(1) of Public Law 89-486 (80 Stat. 248).

principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

(c)[34] Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provisions of this Act or any regulation thereunder shall be subject to deportation in the manner provided by sections 241-243 of the Immigration and Nationality Act of 1952 (66 Stat. 204).[35]

(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1(j) hereof in the form of prints or in any other form reasonably adapted to, or reasonably appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.

(e)[36] Failure to file any such registration statement or supplements thereto as is required by either section 2(a) or section 2(b) shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(f)[37] Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way.

(g)[37] If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full

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[34] Subsec. (c) was amended by sec. 402(d) of the Immigration and Nationality Act of 1952 (66 Stat. 276).

[35] 8 U.S.C. 1251-1253.

[36] Subsec. (e) was added by the act of Sept. 23, 1950 (64 Stat. 1005).

[37] Subsecs. (f) through (h) were added by the act of July 4, 1966 (80 Stat. 244, 248).

compliance with the requirements of this Act and the regulations issued thereunder.

(h)[37] It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either express or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.

Sec. 9.[38] Applicability of Act.—This Act shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.[39]

Sec. 10.[40] Rules and Regulations.—The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this Act.

Sec. 11.[40] Reports to the Congress.—The Attorney General shall, from time to time, make a report to the Congress concerning the administration of this Act, including the nature, sources, and content of political propaganda disseminated or distributed.

Sec. 12.[40] Separability of Provisions.—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 13.[40] This Act is in addition to and not in substitution for any other existing statute.

Sec. 14.[40] Short Title.—This Act may be cited as the "Foreign Agents Registration Act of 1938, as amended."

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[38] Sec. 9 was added by the act of Apr. 29, 1942, 56 Stat. 248, 257.

[39] Words "including the Philippine Islands" were deleted pursuant to proclamation granting independence thereto. See note 9, supra.

[40] Secs. 10 through 14 were added by the act of Apr. 29, 1942 (56 Stat. 248 at 257–8).

b. Contributions by Agents of Foreign Principals and Conflicts of Interest

Partial text of Public Law 89-486 [S. 693], 80 Stat. 248, approved July 4, 1966, as amended by Public Law 93-443 [S. 3044], 88 Stat. 1263, approved October 15, 1974

AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 8. (a) * * * [1]

(b) Chapter 11 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 219. Officers and employees acting as agents of foreign principals

"Whoever being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended."

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[1] Sec. 8(a) of this Act added a new sec. 613 to ch. 20 of title 18, U.S.C., concerning contributions by foreign nationals. However, such section 613 was repealed by sec. 201(a) of the Federal Election Campaign Act (Public Law 94-283; 90 Stat. 496). Public Law 94-283 further added a new sec. 324 (2 U.S.C. 441e) to the Federal Election Campaign Act of 1971 which became the new law regarding contributions of foreign nationals. The text of sec. 324 is as follows:

"CONTRIBUTIONS BY FOREIGN NATIONALS

"SEC. 324. (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

"(b) As used in this section, the term 'foreign national' means—

"(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)), except that the term 'foreign national' shall not include any individual who is a citizen of the United States; or

"(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))."

5. Logan Act—Private Correspondence With Foreign Governments

Partial text of Public Law 80-772 [H.R. 3190], 62 Stat. 744; 18 U.S.C. 953, approved June 25, 1948 (Original legislation approved Jan. 30, 1799, 1 Stat. 613)

AN ACT To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 18 of the United States Code, entitled "Crimes and Criminal Procedure", is hereby revised, codified, and enacted into positive law, and may be cited as "Title 18, U.S.C., § ——", as follows:

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Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

* * * * * * *

6. Neutrality Act of 1939, as amended

Public Resolution 76–54 [H.J. Res. 306], 54 Stat. 4, approved November 4, 1939, as amended by Public Resolution 76–87 [S.J. Res 279], 54 Stat. 611, approved June 26, 1940; Public Law 76–776 [H.R. 10213], 54 Stat. 866, approved August 27, 1940; Public Law 77–294 [H.J. Res. 237], 55 Stat. 764, approved November 17, 1941; Public Law 77–459 [S.J. Res. 133], 56 Stat. 95, approved February 21, 1942; Presidential Proclamation 2695, 11 F.R. 7517, 60 Stat. 1352, approved July 4, 1946; and by Public Law 83–665 [Mutual Security Act of 1954; H.R. 9678], 68 Stat. 861, approved August 26, 1954

JOINT RESOLUTION To preserve the neutrality and the peace of the United States and to secure the safety of its citizens and their interests.

Whereas the United States, desiring to preserve its neutrality in wars between foreign states and desiring also to avoid involvement therein, voluntarily imposes upon its nationals by domestic legislation the restrictions set out in this joint resolution; and

Whereas by so doing the United States waives none of its own rights or privileges, or those of any of its nationals, under international law, and expressly reserves all the rights and privileges to which it and its nationals are entitled under the law of nations; and

Whereas the United States hereby expressly reserves the right to repeal, change or modify this joint resolution or any other domestic legislation in the interests of the peace, security or welfare of the United States and its people: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

PROCLAMATION OF A STATE OF WAR BETWEEN FOREIGN STATES

Section 1.[1] (a) That whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war.

(b) Whenever the state of war which shall have caused the President to issue any proclamation under the authority of this section shall have ceased to exist with respect to any state named in such proclamation, he shall revoke such proclamation with respect to such state.

Sec. 2.[2] * * * [Repealed—1941]

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[1] 22 U.S.C. 441.

[2] Sec. 2, which concerned commerce with states engaged in armed conflict, was repealed by Public Law 77–294 (55 Stat. 764).

Sec. 3.[3] * * * [Repealed—1941]

AMERICAN RED CROSS

Sec. 4.[4] (a) The provisions of section 2(a)[5] shall not prohibit the transportation by vessels, unarmed and not under convoy, under charter or other direction and control of the American Red Cross of officers and American Red Cross personnel, medical personnel, and medical supplies, food, and clothing, for the relief of human suffering: *Provided,* That where permission has not been given by the blockading power, no American Red Cross vessel shall enter a port where a blockade by aircraft, surface vessel, or submarine is being attempted through the destruction of vessels, or into a port of any country where such blockade of the whole country is being so attempted: *Provided further,* That such American Red Cross vessel shall be on a mission of mercy only and carrying only Red Cross materials and personnel.

(b)[6] The provisions of sections 2(a)[5] and 3[7] shall not prohibit a vessel, in ballast, unarmed, and not under convoy, and transporting refugee children, under sixteen years of age, from war zones, or combat areas, and shall not prohibit such vessel entering into such war zones or combat areas for this purpose, together with such necessary American citizen adult personnel in charge as may be approved by the Secretary of State, subject to the provisions of the immigration laws, if such vessel is proceeding under safe conduct granted by all of the states named in the proclamations issued under the authority of section 1(a), and if such vessel has painted on a large scale prominently, distinctly, and unmistakably on each side thereof and upon the superstructure thereof plainly visible from the air an American flag and a statement to the effect that such vessel is a refugee-child rescue ship of the United States or under United States registry: *Provided,* That every such child so brought into the United States shall, previous to departure from the port of embarkation, have been so sponsored by some responsible American person, natural or corporate, that he will not become a public charge.

TRAVEL ON VESSELS OF BELLIGERENT STATES

Sec. 5.[8] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a) it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

(b) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

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[3] Sec. 3, which related to combat areas, was repealed by Public Law 77-294 (55 Stat. 764).
[4] 22 U.S.C. 444. The first paragraph of sec. 4 was amended and restated by Public Resolution 76-87 (54 Stat. 611).
[5] Sec. 2(a) was repealed. See footnote 2.
[6] Subsec. (b) was added by Public Law 76-776 (54 Stat. 866).
[7] Sec. 3 was repealed. See footnote 3.
[8] 22 U.S.C. 445.

Sec. 6.[9] * * * [Repealed—1941]

FINANCIAL TRANSACTIONS

Sec. 7.[10] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a), it shall thereafter be unlawful bonds, securities, or other obligations of the government of any state for any person within the United States to purchase, sell, or exchange named in such proclamation, or of any political subdivision of any such state, or of any person acting for or on behalf of the government of any such state, or political subdivision thereof, issued after the date of such proclamation, or to make any loan or extend any credit (other than necessary credits accruing in connection with the transmission of telegraph, cable, wireless and telephone services) to any such government, political subdivision, or person. The provisions of this subsection shall also apply to the sale by any person within the United States to any person in a state named in any such proclamation of any articles or materials listed in a proclamation referred to in or issued under the authority of section 12(i).[11]

(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of such proclamation.

(c) Whoever shall knowingly violate any of the provisions of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty herein prescribed.

(d) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

(e)[12] This section shall not be operative when the United States is at war.

SOLICITATION AND COLLECTION OF FUNDS AND CONTRIBUTIONS

Sec. 8.[13] (a) Whenever the President shall have issued a proclamation under the authority of section 1(a), it shall thereafter be unlawful for any person within the United States to solicit or receive any contribution for or on behalf of the government of any state named in such proclamation or for or on behalf of any agent or instrumentality of any such state.

(b) Nothing in this section shall be construed to prohibit the solicitation or collection of funds and contributions to be used for medical aid and assistance, or for food and clothing to relieve

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[9] Sec. 6, which prohibited the arming of American merchant vessels, was repealed by Public Law 77-294 (55 Stat. 764).

[10] 22 U.S.C. 447.

[11] Sec. 12(i) was repealed. See footnote 19.

[12] Subsec. (e) was added by Public Law 77-459 (56 Stat. 95).

[13] 22 U.S.C. 448.

human suffering, when such solicitation or collection of funds and contributions is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, but all such solicitations and collections of funds and contributions shall be in accordance with and subject to such rules and regulations as may be prescribed.

(c) Whenever any proclamation issued under the authority of section 1(a) shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

AMERICAN REPUBLICS

Sec. 9.[14] This joint resolution (except section 12) shall not apply to any American republic engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

RESTRICTIONS ON USE OF AMERICAN PORTS

Sec. 10.[15] (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches or information to any warship, tender, or supply ship of a state named in the proclamation issued under the authority of section 1(a), but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U.S.C., 1934 edition, title 18, sec. 31),[16] and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states or to protect the commercial interests, of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power, and it shall be his duty, to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo to any warship, tender or supply ship of a state named in a proclamation issued under the authority of section 1(a).

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information, or any part of its cargo to a warship, tender, or supply ship of a state named in a proclamation issued

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[14] 22 U.S.C. 449.
[15] 22 U.S.C. 550.
[16] 18 U.S.C. 31 was repealed by act June 25, 1948 (63 Stat. 862).

under the authority of section 1(a), he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have issued a proclamation under section 1(a) he may, while such proclamation is in effect, require the owner, master, or person in command of any vessel, foreign or domestic, before departing from the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued pursuant to section 33 of the Immigration Act of February 5, 1917 (U.S.C., title 8, sec. 168).[17] Notwithstanding the provisions of said section 33, the President may issue such regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master, or person in command.

SUBMARINES AND ARMED MERCHANT VESSELS

Sec. 11.[18] Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation.

Sec. 12.[19] * * * [Repealed—1954]

REGULATIONS

Sec. 13.[20] The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct.

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[17] 8 U.S.C. 168 was repealed by act June 27, 1952 (66 Stat. 279).

[18] 22 U.S.C. 451.

[19] Sec. 12, which established the National Munitions Control Board, was repealed by sec. 542(a)(12) of Public Law 83-665 (Mutual Security Act of 1954; 68 Stat. 861).

[20] 22 U.S.C. 453.

UNLAWFUL USE OF THE AMERICAN FLAG

Sec. 14.[21] (a) It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the United States thereon, or to make use of any distinctive signs or marking, indicating that the same is an American vessel.

(b) Any vessel violating the provisions of subsection (a) of this section shall be denied for a period of three months the right to enter the ports or territorial waters of the United States except in cases of force majeure.

GENERAL PENALTY PROVISION

Sec. 15.[22] In every case of the violation of any of the provisions of this joint resolution or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall be fined not more than $10,000, or imprisoned not more than two years, or both.

DEFINITIONS

Sec. 16.[23] For the purposes of this joint resolution—

(a) The term "United States", when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States,[24] the Canal Zone, and the District of Columbia.

(b) The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

(c) The term "vessel" means every description of watercraft and aircraft capable of being used as a means of transportation on, under, or over water.

(d) The term "American vessel" means any vessel documented, and any aircraft registered or licensed, under the laws of the United States.

(e) The term "state" shall include nation, government, and country.

(f) The term "citizen" shall include any individual owing allegiance to the United States, a partnership, company, or association composed in whole or in part of citizens of the United States, and any corporation organized and existing under the laws of the United States as defined in subsection (a) of this section.

SEPARABILITY OF PROVISIONS

Sec. 17. If any of the provisions of this joint resolution, or the application thereof to any person or circumstance, is held invalid, the remainder of the joint resolution, and the application of such provision to other persons or circumstances, shall not be affected thereby.

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[21] 22 U.S.C. 454.
[22] 22 U.S.C. 455.
[23] 22 U.S.C. 456.
[24] Pursuant to the authority of Presidential Proclamation 2695, July 4, 1946 (11 F.R. 7517, 60 Stat. 1352), the words "(including the Philippine Islands)" were struck out at this point.

APPROPRIATIONS

Sec. 18.[25] There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this joint resolution.

REPEALS

Sec. 19. The joint resolution of August 31, 1935, as amended, and the joint resolution of January 8, 1937, are hereby repealed; but offenses committed and penalties, forfeitures, or liabilities incurred under either of such joint resolutions prior to the date of enactment of this joint resolution may be prosecuted and punished, and suits and proceedings for violations of either of such joint resolutions or of any rule or regulation issued pursuant thereto may be commenced and prosecuted, in the same manner and with the same effect as if such joint resolutions had not been repealed.

SHORT TITLE

Sec. 20. This joint resolution may be cited as the "Neutrality Act of 1939".

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[25] 22 U.S.C. 457.

O. TREATIES AND OTHER MATERIAL

NOTE.—Material found in this section is of a more permanent nature and would normally appear in Volume III of this compilation. However, in keeping with the format established in 1977 whereby Volume III would only be reprinted as it became necessary (perhaps every three to five years), that volume was not published this year. When Volume III is reprinted, the items in this section will be incorporated within the appropriate sections as indicated in the table of contents below.

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D. Arms Control and Disarmament

1. Prohibition of Nuclear Weapons in Latin America

a. Additional Protocol I[1]

Done at Mexico February 14, 1967; Ratification advised by the Senate of the United States of America, with understandings, November 13, 1981; Ratification of the United States of America deposited at Mexico, with said understandings, November 23, 1981; Entered into force with respect to the United States of America November 23, 1981

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on mutual respect and sovereign equality of States,

Have agreed as follows:

Article 1. To undertake to apply the statute of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, *de jure* or *de facto,* they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty.

Article 2. The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the provisions regarding ratification and denunciation contained in the Treaty shall be applicable to it.

Article 3. This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

In witness whereof the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Protocol on behalf of their respective Governments.

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[1] The United States is not a party to the Treaty for the Prohibition of Nuclear Weapons in Latin America (the Treaty of Tlatelolco) but has ratified additional Protocols I and II to such treaty. See page 40, vol. III for text of additional Protocol II and page 1050 of this volume for the complete text of the Treaty of Tlatelolco.

b. Resolution of Ratification in the Senate, with Understandings

Resolved (two-thirds of the Senate present concurring, therein), That the Senate advise and consent to the ratification of Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America, also known as the Treaty of Tlatelolco, signed on behalf of the United States of America on May 26, 1977 subject to the following understandings:

(1) That the provisions of the Treaty made applicable by this Additional Protocol do not affect the exclusive power and legal competence under international law of a State adhering to this Protocol to grant or deny transit and transport privileges to its own or any other vessels or aircraft irrespective of cargo or armaments.

(2) That the provisions of the Treaty made applicable by this Additional Protocol do not affect rights under international law of a State adhering to this Protocol regarding the exercise of the freedom of the seas, or regarding passage through or over waters subject to the sovereignty of a State.

(3) That the understandings and declarations attached by the United States to its ratification of Additional Protocol II apply also to its ratification of Additional Protocol I as follows:

I. That the United States Government understands the reference in Article 3 of the treaty to "its own legislation" to relate only to such legislation as is compatible with the rules of international law and as involves an exercise of sovereignty consistent with those rules, and accordingly that ratification of Additional Protocol II by the United States Government could not be regarded as implying recognition, for the purpose of this treaty and its protocols, or for any other purpose, of any legislation which did not, in the view of the United States, comply with the relevant rules of international law.

That the United States Government takes note of the Preparatory Commission's interpretation of the treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the contracting parties retains exclusive power and legal competence, unaffected by the terms of the treaty, to grant or deny non-contracting parties transit and transport privileges.

That as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States Government would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article 1 of the treaty.

II. That the United States Government considers that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons, and that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore the United States Government understands the definition contained in Article 5 of the treaty as necessarily encompassing all nuclear explosive devices. It is also understood that Articles 1 and 5 restrict accordingly the activities of the contracting parties under paragraph 1 of Article 18.

That the United States Government understands that paragraph 4 of Article 18 of the treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with contracting parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with a policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States Government notes Article V of the Treaty on the Non-Proliferation of Nuclear Weapons, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclear-weapons states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive device.

III. That the United States Government also declares that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of Article 4 of the treaty in the same manner as Protocol II requires to act with respect to the territories of contracting parties.

c. Treaty for the Prohibition of Nuclear Weapons in Latin America [1]

Done at Mexico, February 14, 1967

Preamble

In the name of their peoples and faithfully interpreting their desires and aspirations, the Governments of the States which sign the Treaty for the Prohibition of Nuclear Weapons in Latin America,

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and toward strengthening a world at peace, based on the sovereign equality of States, mutual respect and good neighbourliness,

Recalling that the United Nations General Assembly, in its Resolution 808 (IX), adopted unanimously as one of the three points of a coordinated programme of disarmament "the total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type",

Recalling that militarily denuclearized zones are not an end in themselves but rather a means for achieving general and complete disarmament at a later stage,

Recalling United Nations General Assembly Resolution 1911 (XVIII), which established that the measures that should be agreed upon for the denuclearization of Latin America should be taken "in the light of the principles of the Charter of the United Nations and of regional agreements",

Recalling United Nations General Assembly Resolution 2028 (XX), which established the principle of an acceptable balance of mutual responsibilities and duties for the nuclear and non-nuclear powers, and

Recalling that the Charter of the Organization of American States proclaims that it is an essential purpose of the Organization to strengthen the peace and security of the hemisphere.

Convinced:

That the incalculable destructive power of nuclear weapons has made it imperative that the legal prohibition of war should be strictly observed in practice if the survival of civilization and of mankind itself is to be assured,

That nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian population alike, constitute, through the persistence of the radioactivity

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[1] The United States is not a party to this treaty. However, the United States is a party to Additional Protocols I and II of this treaty which refer to specific articles of the treaty. Additional Protocol I can be found on page 1047 while the text of Additional Protocol II is located on page 40 of vol. III.

they release, an attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable.

That general and complete disarmament under effective international control is a vital matter which all the peoples of the world equally demand,

That the proliferation of nuclear weapons, which seems inevitable unless States, in the exercise of the sovereign rights, impose restrictions on themselves in order to prevent it, would make any agreement on disarmament enormously difficult and would increase the danger of the outbreak of a nuclear conflagration,

That the establishment of militarily denuclearized zones is closely linked with the maintenance of peace and security in the respective regions,

That the military denuclearization of vast geographical zones, adopted by the sovereign decision of the States comprised therein, will exercise a beneficial influence on other regions where similar conditions exist,

That the privileged situation of the signatory States, whose territories are wholly free from nuclear weapons, imposes upon them the inescapable duty of preserving that situation both in their own interests and for the good of mankind,

That the existence of nuclear weapons in any country of Latin America would make it a target for possible nuclear attacks and would inevitably set off, throughout the region, a ruinous race in nuclear weapons which would involve the unjustifiable diversion, for warlike purposes, of the limited resources required for economic and social development,

That the foregoing reasons, together with the traditional peace-loving outlook of Latin America, give rise to an inescapable necessity that nuclear energy should be used in that region exclusively for peaceful purposes, and that the Latin American countries should use their right to the greatest and most equitable possible access to this new source of energy in order to expedite the economic and social development of their peoples,

Convinced finally:

That the military denuclearization of Latin America—being understood to mean the undertaking entered into internationally in this Treaty to keep their territories forever free from nuclear weapons—will constitute a measure which will spare their peoples from the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, and will also constitute a significant contribution towards preventing the proliferation of nuclear weapons and a powerful factor for general and complete disarmament, and

That Latin America, faithful to its tradition of universality, must not only endeavour to banish from its homelands the scourge of a nuclear war, but must also strive to promote the well-being and advancement of its peoples, at the same time co-operating in the fulfillment of the ideals of mankind, that is to say, in the consolidation of a permanent peace based on equal rights, economic fairness and social justice for all, in accordance with the principles and purposes set forth in the Charter of the United Nations and in the Charter of the Organization of American States,

Have agreed as follows:

Obligations.

ARTICLE 1

1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any way, and

(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly, or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapons.

Definition of the Contracting Parties

ARTICLE 2

For the purposes of this Treaty the Contracting Parties are those for whom the Treaty is in force.

Definition of territory

ARTICLE 3

For the purposes of this Treaty, the term "territory" shall include the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation.

Zone of application

ARTICLE 4

1. The zone of application of this Treaty is the whole of the territories for which the Treaty is in force.

2. Upon fulfillment of the requirements of article 28, paragraph 1, the zone of application of this Treaty shall also be that which is situated in the western hemisphere within the following limits (except the continental part of the territory of the United States of America and its territorial waters): starting at a point located at 35° north latitude, 75° west longitude; from this point directly southward to a point at 30° north latitude, 75° west longitude; from there, directly eastward to a point at 30° north latitude, 50° west longitude; from there, along a loxodromic line to a point at 5° north latitude, 20° west longitude; from there, directly southward to a point at 60° south latitude, 20° west longitude; from there, di-

rectly westward to a point at 60° south latitude, 115° west longitude; from there, directly northward to a point at 0 latitude, 115° west longitude; from there, along a loxodromic line to a point at 35° north latitude, 150° west longitude; from there, directly eastward to a point at 35° north latitude, 75° west longitude.

Definition of nuclear weapons

ARTICLE 5

For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.

Meeting of signatories

ARTICLE 6

At the request of any of the signatory States or if the Agency established by article 7 should so decide, a meeting of all the signatories may be convoked to consider in common questions which may affect the very essence of this instrument, including possible amendments to it. In either case, the meeting will be convoked by the General Secretary.

Organization

ARTICLE 7

1. In order to ensure compliance with the obligations of this Treaty, the Contracting Parties hereby establish an international organization to be known as the "Agency for the Prohibition of Nuclear Weapons in Latin America", hereinafter referred to as "the Agency". Only the Contracting Parties shall be affected by its decisions.

2. The Agency shall be responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set forth in this Treaty and to the supervision of compliance with the obligations arising therefrom.

3. The Contracting Parties agree to extend to the Agency full and prompt co-operation in accordance with the provisions of this Treaty, of any agreements they may conclude with the Agency and of any agreements the Agency may conclude with any other international organization or body.

4. The headquarters of the Agency shall be in Mexico City.

Organs

ARTICLE 8

1. There are hereby established as principal organs of the Agency a General Conference, a Council and a Secretariat.

2. Such subsidiary organs as are considered necessary by the General Conference may be established within the purview of this Treaty.

The General Conference

ARTICLE 9

1. The General Conference, the supreme organ of the Agency, shall be composed of all the Contracting Parties; it shall hold regular sessions every two years, and may also hold special sessions whenever this Treaty so provides or, in the opinion of the Council, the circumstances so require.

2. The General Conference:

(a) May consider and decide on any matters or questions covered by this Treaty, within the limits thereof, including those referring to powers and functions of any organ provided for in this Treaty.

(b) Shall establish procedures for the control system to ensure observance of this Treaty in accordance with its provisions.

(c) Shall elect the Members of the Council and the General Secretary.

(d) May remove the General Secretary from office if the proper functioning of the Agency so requires.

(e) Shall receive and consider the biennial and special reports submitted by the Council and the General Secretary.

(f) Shall initiate and consider studies designed to facilitate the optimum fulfillment of the aims of this treaty, without prejudice to the power of the General Secretary independently to carry out similar studies for submission and to consideration by the Conference.

(g) Shall be the organ competent to authorize the conclusion of agreements with Governments and other international organization and bodies.

3. The General Conference shall adopt the Agency's budget and fix the scale of financial contributions to be paid by Member States, taking into account the systems and criteria used for the same purpose by the United Nations.

4. The General Conference shall elect its officers for each session and may establish such subsidiary organs as it deems necessary for the performance of its functions.

5. Each Member of the Agency shall have one vote. The decisions of the General Conference shall be taken by a two-thirds majority of the Members present and voting in the case of matters relating to the control system and measures referred to in article 20, the admission of new Members, the election or removal of the General Secretary, adoption of the budget and matters related thereto. Decisions on other matters, as well as procedural questions and also

determination of which questions must be decided by a two-thirds majority, shall be taken by a simple majority of the Members present and voting.

6. The General Conference shall adopt its own rules of procedure.

The Council

ARTICLE 10

1. The Council shall be composed of five Members of the Agency elected by the General Conference from among the Contracting Parties, due account being taken of equitable geographic distribution.

2. The Members of the Council shall be elected for a term of four years. However, in the first election three will be elected for two years. Outgoing Members may not be re-elected for the following period unless the limited number of States for which the Treaty is in force so requires.

3. Each Member of the Council shall have one representative.

4. The Council shall be so organized as to be able to function continuously.

5. In addition to the functions conferred upon it by this Treaty and to those which may be assigned to it by the General Conference, the Council shall, through the General Secretary, ensure the proper operation of the control system in accordance with the provisions of this Treaty and with the decisions adopted by the General Conference.

6. The Council shall submit an annual report on its work to the General Conference as well as such special reports as it deems necessary or which the General Conference requests of it.

7. The Council shall elect its officers for each session.

8. The decisions of the Council shall be taken by a simple majority of its Members present and voting.

9. The Council shall adopt its own rules of procedure.

The Secretariat

ARTICLE 11

1. The Secretariat shall consist of a General Secretary, who shall be the chief administrative officer of the Agency, and of such staff as the Agency may require. The term of office of the General Secretary shall be four years and he may be re-elected for a single additional term. The General Secretary may not be a national of the country in which the Agency has its headquarters. In case the office of General Secretary becomes vacant, a new election shall be held to fill the office for the remainder of the term.

2. The staff of the Secretariat shall be appointed by the General Secretary, in accordance with rules laid down by the General Conference.

3. In addition to the functions conferred upon him by this Treaty and to those which may be assigned to him by the General Conference—the General Secretary shall ensure, as provided by article 10, paragraph 5, the proper operation of the control system estab-

lished by this Treaty, in accordance with the provisions of the Treaty and the decisions taken by the General Conference.

4. The General Secretary shall act in that capacity in all meetings of the General Conference and of the Council and shall make an annual report to both bodies on the work of the Agency and any special reports requested by the General Conference or the Council or which the General Secretary may deem desirable.

5. The General Secretary shall establish the procedures for distributing to all Contracting Parties information received by the Agency from governmental sources and such information from non-governmental sources as may be of interest to the Agency.

6. In the performance of their duties the General Secretary and the staff shall not seek or receive instructions from any Government or from any other authority external to the Agency and shall refrain from any action which might reflect on their position as international officials responsible only to the Agency; subject to their responsibility to the Agency, they shall not disclose any industrial secrets or other confidential information coming to their knowledge by reason of their official duties in the Agency.

7. Each of the Contracting Parties undertakes to respect the exclusively international character of the responsibilities of the General Secretary and the staff and not to seek to influence them in the discharge of their responsibilities.

Control system

ARTICLE 12

1. For the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with article 1, a control system shall be established which shall be put into effect in accordance with the provisions of articles 13–18 of this Treaty.

2. The control system shall be used in particular for the purpose of verifying:

(a) That devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons,

(b) That none of the activities prohibited in article 1 of this Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduced from abroad, and

(c) That explosions for peaceful purposes are compatible with article 18 of this Treaty.

IAEA safeguards

ARTICLE 13

Each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities. Each Contracting Party shall initiate negotiations within a period of 180 days after the date of the deposit of its instrument of ratification of this Treaty. These agreements shall enter into force, for each

Party, not later than eighteen months after the date of the initiation of such negotiations except in case of unforeseen circumstances or *force majeure.*

Reports of the Parties

ARTICLE 14

1. The Contracting Parties shall submit to the Agency and to the International Atomic Energy Agency, for their information, semiannual reports stating that no activity prohibited under this Treaty has occurred in their respective territories.

2. The Contracting Parties shall simultaneously transmit to the Agency a copy of any report they may submit to the International Atomic Energy Agency which relates to matters that are the subject of this Treaty and to the application of safeguards.

3. The Contracting Parties shall also transmit to the Organization of American States, for its information, any reports that may be of interest to it, in accordance with the obligations established by the Inter-American System.

Special reports requested by the General Secretary

ARTICLE 15

1. With the authorization of the Council, the General Secretary may request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any event or circumstance connected with compliance with this Treaty, explaining his reasons. The Contracting Parties undertake to co-operate promptly and fully with the General Secretary.

2. The General Secretary shall inform the Council and the Contracting Parties forthwith of such requests and of the respective replies.

Special inspections

ARTICLE 16

1. The International Atomic Energy Agency and the Council established by this Treaty have the power of carrying out special inspections in the following cases:

(a) In the case of the International Atomic Energy Agency, in accordance with the agreements referred to in article 13 of this Treaty;

(b) In the case of the Council:

(i) When so requested, the reasons for the request being stated, by any Party which suspects that some activity prohibited by this Treaty has been carried out or is about to be carried out, either in the territory of any other Party or in any other place on such latter Party's behalf, the Council shall immediately arrange for such an inspection in accordance with article 10, paragraph 5.

(ii) When requested by any Party which has been suspected of or charged with having violated this Treaty, the

Council shall immediately arrange for the special inspection requested in accordance with article 10, paragraph 5. The above requests will be made to the Council through the General Secretary.

2. The costs and expenses of any special inspection carried out under paragraph 1, sub-paragraph (b), sections (i) and (ii) of this article shall be borne by the requesting Party or Parties, except where the Council concludes on the basis of the report on the special inspection that, in view of the circumstances existing in the case, such costs and expenses should be borne by the Agency.

3. The General Conference shall formulate the procedures for the organization and execution of the special inspections carried out in accordance with paragraph 1, sub-paragraph (b), sections (i) and (ii) of this article.

4. The Contracting Parties undertake to grant the inspectors carrying out such special inspections full and free access to all places and all information which may be necessary for the performance of their duties and which are directly and intimately connected with the suspicion of violating of this Treaty. If so requested by the authorities of the Contracting Party in whose territory the inspection is carried out, the inspectors designated by the General Conference shall be accompanied by representatives of said authorities, provided that this does not in any way delay or hinder the work of the inspectors.

5. The Council shall immediately transmit to all the Parties, through the General Secretary, a copy of any report resulting from special inspections.

6. Similarly, the Council shall send through the General Secretary to the Secretary-General of the United Nations, for transmission to the United Nations Security Council and General Assembly, and to the Council of the Organization of American States, for its information, a copy of any report resulting from any special inspection carried out in accordance with paragraph 1, sub-paragraph (b), sections (i) and (ii) of this article.

7. The Council may decide, or any Contracting Party may request, the convening of a special session of the General Conference for the purpose of considering the reports resulting from any special inspection. In such a case, the General Secretary shall take immediate steps to convene the special session requested.

8. The General Conference, convened in special session under this article, may make recommendations to the Contracting Parties and submit reports to the Secretary-General of the United Nations to be transmitted to the United Nations Security Council and the General Assembly.

Use of nuclear energy for peaceful purposes

ARTICLE 17

Nothing in the provisions of this Treaty shall prejudice the rights of the Contracting Parties, in conformity with this Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and social progress.

Explosions for peaceful purposes

ARTICLE 18

1. The Contracting Parties may carry out explosions of nuclear devices for peaceful purposes—including explosions which involve devices similar to those used in nuclear weapons—or collaborate with third parties for the same purpose, provided that they do so in accordance with the provisions of this article and the other articles of the Treaty, particularly articles 1 and 5.

2. Contracting Parties intending to carry out, or to co-operate in carrying out, such an explosion shall notify the Agency and the International Atomic Energy Agency, as far in advance as the circumstances require, of the date of the explosion and shall at the same time provide the following information:

(a) The nature of the nuclear device and the source from which it was obtained,

(b) The place and purpose of the planned explosion,

(c) The procedures which will be followed in order to comply with paragraph 3 of this article,

(d) The expected force of the device, and

(e) The fullest possible information on any possible radioactive fall-out that may result from the explosion or explosions, and measures which will be taken to avoid danger to the population, flora, fauna and territories of any other Party or Parties.

3. The General Secretary and the technical personnel designated by the Council and the International Atomic Energy Agency may observe all the preparations, including the explosion of the device, and shall have unrestricted access to the any area in the vicinity of the site of the explosion in order to ascertain whether the device and the procedures followed during the explosion are in conformity and the information supplied under paragraph 2 of this article and the other provisions of this Treaty.

4. The Contracting Parties may accept the collaboration of third parties for the purpose set forth in paragraph 1 of the present article, in accordance with paragraphs 2 and 3 thereof.

Relations with other international organizations

ARTICLE 19

1. The Agency may conclude such agreements with the International Atomic Energy Agency as are authorized by the General Conference and as it considers likely to facilitate the efficient operation of the control system established by this Treaty.

2. The Agency may also enter into relations with any international organization or body, especially any which may be established in the future to supervise disarmament or measures for the control of armaments in any part of the world.

3. The Contracting Parties may, if they see fit, request the advice of the Inter-American Nuclear Energy Commission on all technical matters connected with the application of this Treaty with which the Commission is competent to deal under its Statute.

Measures in the event of violation of the Treaty

ARTICLE 20

1. The General Conference shall take note of all cases in which, in its option, any Contracting Party is not complying fully with its obligations under this Treaty and shall draw the matter to the attention of the Party concerned, making such recommendations as it deems appropriate.

2. If, in its opinion, such non-compliance constitutes a violation of this Treaty which might endanger peace and security, the General Conference shall report thereon simultaneously to the United Nations Security Council and the General Assembly through the Secretary-General of the United Nations, The General Conference shall likewise report to the International Atomic Energy Agency for such purposes as are relevant in accordance with its Statute.

United Nations and Organization of American States

ARTICLE 21

None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the Parties under the Charter of the United Nations or, in the case of the States Members of the Organization of American States, under existing regional treaties.

Privileges and immunities

ARTICLE 22

1. The Agency shall enjoy in the territory of each of the Contracting Parties such legal capacity and such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. Representatives of the Contracting Parties accredited to the Agency and officials of the Agency shall similarly enjoy such privileges and immunities as are necessary for the performance of their functions.

3. The Agency may conclude agreements with the Contracting Parties with a view to determining the details of the application of paragraphs 1 and 2 of this article.

Notification of other agreements

ARTICLE 23

Once this Treaty has entered into force, the Secretariat shall be notified immediately of any international agreement concluded by any of the Contracting parties on matters with which this Treaty is concerned; the Secretariat shall register it and notify the other Contracting parties.

Settlement of disputes

ARTICLE 24

Unless the Parties concerned agree on another mode of peaceful settlement, any question or dispute concerning the interpretation or application of this Treaty which is not settled shall be referred to the International Court of Justice with the prior consent of the Parties to the controversy.

Signature

ARTICLE 25

1. This Treaty shall be open indefinitely for signature by:

(a) All the Latin American Republics, and

(b) All other sovereign States situated in their entirety south of latitude 35° north in the western hemisphere; and, except as provided in paragraph 2 of this article, all such States which become sovereign, when they have been admitted by the General Conference.

2. The General Conference shall not take any decision regarding the admission of a political entity part or all of whose territory is the subject, prior to the date when this Treaty is opened for signatures of a dispute or claim between an extra-continental country and one or more Latin American States, so long as the dispute has not been settled by peaceful means.

Ratification and deposit

ARTICLE 26

1. This Treaty shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

2. This Treaty and the instruments of ratification shall be deposited with the Government of the Mexican United States, which is hereby designated the Depositary Government.

3. The Depositary Government shall send certified copies of this Treaty to the Governments of signatory States and shall notify them of the deposit of each instrument of ratification.

Reservations

ARTICLE 27

This Treaty shall not be subject to reservations.

Entry into force

ARTICLE 28

1. Subject to the provisions of paragraph 2 of this article this Treaty shall enter into force among the States that have ratified it as soon as the following requirements have been met:

(a) Deposit of the instruments of ratification of this Treaty with the Depositary Government by the Governments of the States mentioned in article 25 which are in existence on the

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date when this Treaty is opened for signature and which are not affected by the provisions of article 25, paragraph 2;

(b) Signature and ratification of Additional Protocal I annexed to this Treaty by all extra-continental or continental States having *de jure* or *de facto* international responsibility for territories situated in the zone of application of the Treaty;

(c) Signature and ratification of the Additional Protocol II annexed to this Treaty by all powers possessing nuclear weapons;

(d) Conclusion of bilateral or multilateral agreements on the application of the Safeguards System of the International Atomic Energy Agency in accordance with article 13 of this Treaty.

2. All signatory States shall have the imprescriptible right to waive, wholly or in part, the requirements laid down in the preceding paragraph. They may do so by means of a declaration which shall be annexed to their respective instrument of ratification and which may be formulated at the time of deposit of the instrument or subsequently. For those States which exercise this right, this Treaty shall enter into force upon deposit of the declaration, or as soon as those requirements have been met which have not been expressly waived.

3. As soon as this Treaty has entered into force in accordance with the provisions of paragraph 2 for eleven States, the Depositary Government shall convene a preliminary meeting of those States in order that the Agency may be set up and commence its work.

4. After the entry into force of this Treaty for all the countries of the zone, the rise of a new power possessing nuclear weapons shall have the effect of suspending the execution of this Treaty for those countries which have ratified it without waiving requirements of paragraph 1, sub-paragraph (c) of this article, and which request such suspension; the Treaty shall remain suspended until the new power on its own initiative or upon request by the General Conference, ratifies the annexed Additional Protocol II.

Amendments

ARTICLE 29

1. Any Contracting Party may propose amendments to this Treaty and shall submit its proposals to the Council through the General Secretary, who shall transmit them to all the other Contracting Parties and, in addition, to all other signatories in accordance with article 6. The Council, through the General Secretary, shall immediately following the meeting of signatories convene a special session of the General Conference to examine the proposals made, for the adoption of which a two-thirds majority of the Contracting parties present and voting shall be required.

2. Amendments adopted shall enter into force as soon as the requirements set forth in article 28 of this Treaty have been complied with.

Duration and denunciation

ARTICLE 30

1. This Treaty shall be of a permanent nature and shall remain in force indefinitely, but any Party may denounce it by notifying the General Secretary of the Agency if, in the opinion of the denouncing State, there have arisen or may arise circumstances connected with the content of this Treaty or of the annexed Additional Protocols I and II which affect its supreme interests or the peace and security of one or more Contracting Parties.

2. The denunciation shall take effect three months after the delivery to the General Secretary of the Agency of the notification by the Government of the signatory State concerned. The General Secretary shall immediately communicate such notification to the other Contracting Parties and to the Secretary-General of the United Nations for the information of the United Nations Security Council and the General Assembly. He shall also communicate it to the Secretary-General of the Organization of American States.

Authentic texts and registration

ARTICLE 31

This Treaty, of which the Spanish, Chinese, English, French, Portuguese and Russian texts are equally authentic, shall be registered by the Depositary Government in accordance with article 102 of the United Nations Charter. The Depositary Government shall notify the Secretary-General of the United Nations of the signatures, ratifications and amendments relating to this Treaty and shall communicate them to the Secretary-General of the Organization of American States for its information.

TRANSITIONAL ARTICLE

Denunciation of the declaration referred to in article 28, paragraph 2, shall be subject to the same procedures as the denunciation of this Treaty, except that it will take effect on the date of delivery of the respective notification.

In witness whereof the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Treaty on behalf of their respective Governments.

Done at Mexico, Distrito Federal, on the Fourteenth day of February, one thousand nine hundred and sixty-seven.

G. Foreign Economic Policy: Tariff and Trade

1. International Wheat Agreement

a. Protocol for the Sixth Extension of the Wheat Trade Convention, 1971 [1]

Open for signature at Washington, March 24 through May 15, 1981; entered into force July 1, 1981; declaration of provisional application deposited by the United States June 23, 1981; ratification advised by the Senate of the United States December 16, 1981; ratification deposited January 12, 1982; entered into force for the United States January 12, 1982.

PREAMBLE

The Conference to establish the texts of the 1981 Protocols for the sixth extension of the Wheat Trade Convention, 1971 and the first extension of the Food Aid Convention, 1980 constituting the International Wheat Agreement, 1971.

Considering that the International Wheat Agreement of 1949 was revised, renewed or extended in 1953, 1956, 1959, 1962, 1965, 1966, 1967, 1968, 1971, 1975, 1976, 1978 and 1979,

Considering that the International Wheat Agreement, 1971, consisting of two separate legal instruments—the Wheat Trade Convention, 1971, which was further extended by protocol in 1979; and the Food Aid Convention, 1980—will expire on 30 June 1981,

Has established the texts of the 1981 Protocols for the sixth extension of the Wheat Trade Convention, 1971 and for the first extension of the Food Aid Convention, 1980.

1981 PROTOCOL FOR THE SIXTH EXTENSION OF THE WHEAT TRADE CONVENTION, 1971

The Governments party to this Protocol,

Considering that the Wheat Trade Convention, 1971 (hereinafter referred to as "the Convention") of the International Wheat Agreement, 1971, which was further extended by Protocol in 1979, expires on 30 June 1981,

Have agreed as follows:

ARTICLE 1

Extension, Expiry and Termination of the Convention

Subject to the provisions of Article 2 of this Protocol, the Convention shall continue in force between the parties to this protocol until 30 June 1983 provided that, if a new international agreement

[1] This Protocol replaces the Protocol for the Fifth Extension of the Wheat Trade Convention, 1971 which appears on page 324 of vol. III. For the full text of the Wheat Trade Convention, 1971, see page 302, vol. III.

covering wheat enters into force before 30 June 1983, this Protocol shall remain in force only until the date of entry into force of the new agreement.

ARTICLE 2

Inoperative Provisions of the Convention

The following provisions of the Convention shall be deemed to be inoperative with effect from 1 July 1981:

a. Paragraph (4) of Article 19;
b. Articles 22 to 26 inclusive;
c. Paragraph (1) of Article 27;
d. Articles 29 to 31 inclusive.

ARTICLE 3

Definition

Any reference in this Protocol to a "Government" or "Governments" shall be construed as including a reference to the European Economic Community (hereinafter referred to as "the Community"). Accordingly, any reference in this Protocol to "signature" or to the "deposit of instruments of ratification, acceptance of approval" or "and instrument of accession" or "a declaration of provisional application" by a Government shall, in the case of the Community, be construed as including signature or declaration of provisional application on behalf of the Community by its competent authority and the deposit of the instrument required by the institutional procedures of the Community to be deposited for the conclusion of an international agreement.

ARTICLE 4

Finance

The initial contribution of any exporting or importing member acceding to this Protocol under paragraph (1)(b) of Article 7 thereof, shall be assessed by the Council on the basis of the votes to be distributed to it and the period remaining in the current crop year, but the assessments made upon other exporting and importing members for the current crop year shall not be altered.

ARTICLE 5

Signature

This Protocol shall be open for signature in Washington from 24 March 1981 until and including 15 May 1981 by Governments of countries party to the Convention as further extended by the 1979 Protocol, or which are provisionally regarded as party to the Convention as further extended by the 1979 Protocol, on 6 March 1981, or which are members of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, and are listed in Annex A or Annex B to the Convention.

ARTICLE 6

Ratification, Acceptance or Approval

This Protocol shall be subject to ratification, acceptance or approval by each signatory Government in accordance with its respective constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the Government of the United States of America not later than 30 June 1981, except that the Council may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance or approval by that date.

ARTICLE 7

Accession

1. This Protocol shall be open for accession

a. until 30 June 1981 by the Government of any member listed in Annex A or B to the Convention as of that date, except that the Council may grant one or more extensions of time to any Government that has not deposited its instrument by that date, and

b. after 30 June 1981 by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, upon such conditions as the Council considers appropriate by not less than two thirds of the votes cast by exporting members and two thirds of the votes cast by importing members.

2. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America.

3. Where, for the purposes of the operation of the Convention and this Protocol, reference is made to members listed in Annex A or B to the Convention, any member the Government of which has acceded to the Convention on conditions prescribed by the Council, or to this Protocol in accordance with paragraph (1)(b) of this Article, shall be deemed to be listed in the appropriate Annex.

ARTICLE 8

Provisional Application

Any signatory Government may deposit with the Government of the United States of America a declaration of provisional application of this Protocol. Any other Government eligible to sign this Protocol or whose application for accession is approved by the Council may also deposit with the Government of the United States of America a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

ARTICLE 9

Entry Into Force

1. This Protocol shall enter into force on 1 July 1981 if, by 30 June 1981, Governments representing exporting members which

held at least 60 percent of the votes set out in Annex A and representing importing members which held at least 50 percent of the votes set out in Annex B, or would have held such votes on 30 June 1981 if they had been parties to the Convention on that date, have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, in accordance with Articles 6, 7 and 8 of this Protocol.

2. If this Protocol does not enter into force in accordance with paragraph (1) of this Article, the Governments which have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, may decide by mutual consent that it shall enter into force among those Governments that have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application.

ARTICLE 10

Notification by Depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding Governments of each signature, ratification, acceptance, approval, provisional application of, and accession to, this Protocol as well as of each notification and notice received under Article 27 of the Convention and each declaration and notification received under Article 28 of the Convention.

ARTICLE 11

Certified Copy of the Protocol

As soon as possible after the entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

ARTICLE 12

Relationship of Preamble to Protocol

This protocol includes the Preamble to the 1981 Protocols for the sixth extension of the Wheat Trade Convention, 1971 and for the first extension of the Food Aid Convention, 1980, constituting the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party and to the Executive Secretary of the Council.

b. Protocol for the First Extension of the Food Aid Convention, 1980 [1]

Open for signature at Washington, March 24 through May 15, 1981; entered into force July 1, 1981; declaration of provisional application deposited by the United States June 23, 1981; ratification advised by the Senate of the United States December 16, 1981; ratification deposited January 12, 1982; entered into force for the United States January 12, 1982.

PREAMBLE

The Conference to establish the texts of the 1981 Protocols for the sixth extension of the Wheat Trade Convention, 1971 and the first extension of the Food Aid Convention, 1980 constituting the International Wheat Agreement, 1971.

Considering that the International Wheat Agreement of 1949 was revised, renewed or extended in 1953, 1956, 1959, 1962, 1965, 1966, 1967, 1968, 1971, 1974, 1975, 1976, 1978 and 1979,

Considering that the International Wheat Agreement, 1971, consisting of two separate legal instruments—the Wheat Trade Convention, 1971, which was further extended by Protocol in 1979; and the Food Aid Convention, 1980—will expire on 30 June 1981,

Has established the texts of the 1981 Protocols for the sixth extension of the Wheat Trade Convention, 1971 and for the first extension of the Food Aid Convention, 1980.

1981 Protocol for the First Extension of the Food Aid Convention, 1980

The parties to this Protocol,

Considering that the Food Aid Convention, 1980 (hereinafter referred to as "the Convention") of the International Wheat Agreement, 1971 expires on 30 June 1981,

Have agreed as follows:

ARTICLE I

Extension, Expiry and Termination of the Convention

Subject to the provisions of Article II of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1983 provided that, if a new agreement covering food aid enters into force before 30 June 1983, this Protocol shall remain in force only until the date of entry into force of the new agreement.

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[1] For the full text of the Food Aid Convention, 1980, see page 317 of vol. III.

ARTICLE II

Inoperative Provisions of the Convention

The following provisions of the Convention shall be deemed to be inoperative with effect from 1 July 1981:

a. Article XII.
b. Article XVII.
c. Paragraph (1) of Article XVIII.

ARTICLE III

International Food Aid

For the purposes of the operation of the Convention as extended by this Protocol, any member which has acceded to this Protocol pursuant to paragraph (2) of Article VIII of this Protocol shall be deemed to be listed in paragraph (3) of Article III of the Convention, together with its minimum contribution as determined under the relevant provisions of Article VIII of this Protocol.

ARTICLE IV

Signature

This Protocol shall be open for signature in Washington from 24 March 1981 until and including 15 May 1981 by the Governments referred to in paragraph (3) of Article III of the Convention.

ARTICLE V

Depositary

The Government of the United States of America shall be the depositary of this Protocol.

ARTICLE VI

Ratification, Acceptance or Approval

This Protocol shall be subject to ratification, acceptance or approval by each signatory Government in accordance with its constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 June 1981, except that the Food Aid Committee under the Convention (hereinafter referred to as "the Committee") may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance or approval by that date.

ARTICLE VII

Provisional Application

Any signatory Government may deposit with the depositary a declaration of provisional application of this Protocol. Any such Government shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

ARTICLE VIII

Accession

1. This Protocol shall be open for accession by any Government referred to in paragraph (3) of Article III of the Convention that has not signed this Protocol. Instruments of accession shall be deposited with the depositary not later than 30 June 1981, except that the Committee may grant one or more extensions of time to any Government that has not deposited its instrument of accession by that date.

2. Once this Protocol has entered into force in accordance with Article IX of this Protocol, it shall be open for accession by any Government other than those referred to in paragraph (3) of Article III of the Convention, upon such conditions as the Committee considers appropriate. Instruments of accession shall be deposited with the depositary.

3. Any Government acceding to this Protocol under paragraph (1) or paragraph (2) of this Article may deposit with the depositary a declaration of provisional application of this Protocol pending the deposit of its instrument of accession. Any such Government shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

ARTICLE IX

Entry Into Force

1. This Protocol shall enter into force on 1 July 1981, if by 30 June 1981 the Governments referred to in paragraph (3) of Article III of the Convention have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, and provided that the 1981 Protocol for the sixth extension of the Wheat Trade Convention, 1971, or a new Wheat Trade Convention replacing it, is in force.

2. If this Protocol does not enter into force in accordance with paragraph (1) of this Article, the Governments which have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, may decide by unanimous consent that it shall enter into force among themselves provided that the 1981 Protocol for the sixth extension of the Wheat Trade Convention, 1971, or a new Wheat Trade Convention replacing it, is in force, or may take whatever other action they consider the situation requires.

ARTICLE X

Duration

This Protocol shall remain in force until and including 30 June 1983, provided that the 1981 Protocol for the sixth extension of the Wheat Trade Convention, 1971, or a new Wheat Trade Convention replacing it, remains in force until and including that date.

ARTICLE XI

Authentic Texts

The texts of this Protocol in the English, French, Russian and Spanish languages shall all be equally authentic. The originals shall be deposited in the archives of the depository, which shall transmit certified copies thereof to each signatory and acceding Government.

ARTICLE XII

Relationship of Preamble to Protocol

This Protocol includes the Preamble to the 1981 Protocols for the sixth extension of the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

I certify that the foregoing is a true copy of the Protocols for the Sixth Extension of the Wheat Trade Convention, 1971, and the First Extension of the Food Aid Convention, 1980, established, together with a common Preamble, by a Conference of Governments convened at London on March 6, 1981, and opened for signature at Washington on March 24, 1981, in the English, French, Russian and Spanish languages, the original of which is deposited in the archives of the Government of the United States of America.

K. War Powers, Collective Security Treaties, and Related Material

1. Agreement Extending for Eight Months Provisions of the Treaty of Friendship and Cooperation With Spain [1]

Exchange of Notes done at Madrid September 4, 1981; Ratification advised by the Senate of the United States on November 18, 1981

EMBASSY OF THE UNITED STATES OF AMERICA,
Madrid, September 4, 1981.

HIS EXCELLENCY JOSE PEDRO PEREZ-LLORCA,
Minister of Foreign Affairs, Madrid.

EXCELLENCY: With regard to the negotiations currently in progress between our two Governments on a successor agreement to the Treaty of Friendship and Cooperation, signed at Madrid on January 24, 1976, and taking into account the new situation arising from Spain's having initiated the constitutional steps for its accession to the North Atlantic Treaty, as well as the shared opinion of our two delegations to the effect that, notwithstanding their notable progress to date, it will not be possible to conclude these negotiations prior to the expiration of said Treaty on the 21st of this month, I have the honor to inform you that my Government proposes that our two Governments, consistent with the provisions of Article VII, agree on an additional period of eight months, commencing on the date of expiration of the Treaty, within which to conclude those negotiations, and that, during such eight-month period, the rights, duties and obligations of the Parties currently deriving from the Treaty and its associated agreements remain in effect.

I have the further honor to propose to you that, should the foregoing be acceptable to the Government of Spain, this Note and your Note in reply communicating your acceptance constitute an agreement between our two Governments, which will enter into force only upon the date on which both Parties communicate in writing that their respective applicable constitutional requirements have been satisfied, but which will apply provisionally from the date of your Note in reply and during the time in which the above-mentioned requirements are being met.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

TERENCE A. TODMAN.

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[1] For full text of the treaty, see page 821, vol. III. This exchange of notes extended the treaty until May 21, 1982.

2. Protocol to the North Atlantic Treaty on the Accession of Spain

Signed at Brussels, December 10, 1981; Ratification advised by Senate, March 16, 1982; entered into force for the United States, May 29, 1982

The Parties of the North Atlantic Treaty, signed at Washington on April 4, 1949,

Being satisfied that the security of the North Atlantic area will be enhanced by the accession of the Kingdom of Spain to that Treaty,

Agree as follows:

Article I

Upon the entry into force of this Protocol, the Secretary General of the North Atlantic Treaty Organization shall, on behalf of all the Parties, communicate to the Government of the Kingdom of Spain an invitation to accede to the North Atlantic Treaty. In accordance with article 10 of the Treaty, the Kingdom of Spain shall become a Party on the date when it deposits its instrument of accession with the Government of the United States of America.

Article II

The present Protocol shall enter into force when each of the Parties to the North Atlantic Treaty has notified the Government of the United States of America of its acceptance thereof. The Government of the Untied States of America shall inform all the Parties to the North Atlantic Treaty of the date of receipt of each such notification and of the date of the entry into force of the present Protocol.

Article III

The present Protocol, of which the English and French texts are equally authentic, shall be deposited in the Archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of all the Parties to the North Atlantic Treaty.

In witness whereof, the undersigned plenipotentiaries have signed the present Protocol.

USE OF THE INDEX

The index is organized by subject matter only. Each subject entry also includes the legal citation indicating the document to which it refers. These legal citations were not chosen on the basis of standard legal citation form, but rather for the amount of information they provide and for convenience in producing a computer-printed index. A list of abbreviations used in the legal citation section of the index appears below.

Art—Article
EO—Executive Order
fn—Footnote
H. Con. Res.—House Concurrent Resolution
H. Res.—House Resolution
Para.—Paragraph
PL—Public Law
S. Con. Res.—Senate Concurrent Resolution
S. Res.—Senate Resolution
Sec—Section
Stat.—United States Statutes at Large
USC—United States Code

Page references, wherever possible, indicate the exact page on which mention of the entry is made. Entries of a more general nature that refer to a large section or to an entire document are listed with the page on which the reference begins.

GLOSSARY OF TERMS USED IN THE INDEX

ACDA	Arms Control and Disarmament Agency
ADB	Asian Development Bank
AEC	Atomic Energy Commission
AFDB	African Development Bank
AFDF	African Development Fund
AID	Agency for International Development
CBI	Caribean Basin Initiative
CIA	Central Intelligence Agency
EEC	European Economic Community
FAO	Food and Agriculture Organization
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
IADB	Inter-American Development Bank
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICA	International Communication Agency
IDA	International Development Association
IDCA	International Development Cooperation Agency
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFI	International Financial Institution
IMF	International Monetary Fund
MDB	Multilteral Development Bank
MIA	Missing-In-Action
MFO	Multinational Force and Observers
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OAU	Organization of African Unity
OPIC	Overseas Private Investment Corporation
PLO	Palestine Liberation Organization
POW	Prisoners-of-War
SDAF	Special Defense Acquisition Fund
SEATO	Southeast Asia Treaty Organization
UN	United Nations
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific, and Cultural Organization
USIA	United States Information Agency
WHO	World Health Organization

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